

Before the
Administrative Hearing Commission
State of Missouri



JULIE M. EUBANKS,

Petitioner,

vs.

DEPARTMENT OF SOCIAL SERVICES,
MISSOURI MEDICAID AUDIT AND
COMPLIANCE UNIT,

Respondent.

No. 13-1989 SP

AMENDED DECISION

Julie M. Eubanks¹ is subject to a sanction in the amount of \$22,235.00, as well as 100% review of her claims prior to payment for a period of 60 days from the date this decision becomes final and is no longer subject to appeal, for billing errors and for failing to produce adequate documentation to substantiate the services billed to the Department of Social Services, Missouri Medicaid Audit and Compliance Unit (“the Department”).

Procedure

On November 15, 2013, Eubanks filed a complaint challenging the Department’s imposition of sanctions in two decision letters issued on October 17, 2013. On December 9, 2013, the Department answered the complaint. Also on December 9, 2013, the Department moved for partial dismissal of the complaint. Specifically, the Department asked us to dismiss

¹ At the time of the hearing, Eubanks’ name had changed to Julie Eubanks Battle. We use her prior name here, because the parties’ pleadings and briefs use it.

the complaint insofar as it concerned a letter it issued October 17, 2013, imposing a sanction of 100% review of Eubanks' Medicaid claims prior to payment ("pre-payment review"). Although Eubanks did not respond to the motion, we denied it on February 27, 2014.

On March 19, 2014, Eubanks, through her counsel M. Tony Patton of Polsinelli, filed a letter with the Commission, and on March 21, 2014, Patton filed what was represented to be a copy of Eubanks' calendar records for 2011, accompanied by Eubanks' affidavit. We discuss these filings below in our conclusions of law.

Commissioner Mary Nelson convened a hearing on the complaint on March 21, 2014. Eubanks was represented by Patton. Assistant Attorney General Nichole Bock represented the Department. The matter became ready for our decision on August 28, 2014, when Eubanks' reply brief was due. We issued an original decision in this case on September 5, 2014. On September 23, 2014, the Department filed a motion for reconsideration of that decision. On October 10, 2014, Eubanks responded to the Department's motion.

Commissioner Sreenivasa Rao Dandamudi, having read the full record including all the evidence, renders the decision.²

Findings of Fact

1. Eubanks was, at all relevant times, a licensed clinical social worker.

Eubanks' Medicaid-Related Mental Health Practice

2. On October 28, 2008, Eubanks entered into a Missouri Medicaid provider agreement ("the Agreement") with the Department. The Agreement stated, among other things:

All providers are required to make and maintain records, as required by applicable laws, regulations, rules and policies, included but not limited to fiscal records, medical records, and records related to civil rights issues, which fully demonstrate the

² Section 536.080.2, RSMo 2000; *Angelos v. State Bd. of Regis'n for the Healing Arts*, 90 S.W.3d 189 (Mo. App., S.D. 2002). Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

extent, nature and medical necessity of services and items provided to recipients, which support the fee charged or payment sought for the services and items, and which demonstrate compliance with all applicable requirements. These records shall be retained for five (5) years, and shall be made available on request by an authorized representative of the DSS/DMS or the U.S. Department of Health and Human Services. Documents retained must include all records and documents required by applicable regulations and Medicaid manual and bulletin provisions including the original enrollment documents confirming the provider's original signature. All services billed through the Medicaid Program are subject to post-payment review. This may include unannounced on-site review of records. Failure to submit or failure to retain documentation for all services billed to the Medicaid Program may result in recovery of payments for Medicaid services and may result in sanctions to the provider's Medicaid participation.^[3]

3. The Agreement also stated, among other things, that Eubanks would be financially responsible for all services that were not documented, and she must comply with all applicable state and federal laws, regulations, and applicable MoHealthNet manuals.

4. At all relevant times, the applicable MoHealthNet manual for Eubanks' Medicaid work was MoHealthNet's Psychology/Counseling Manual ("the Manual"), last updated on June 27, 2008.⁴

5. At all relevant times, Eubanks provided mental health services to Medicaid-qualified individuals ("participants") under the Agreement.

6. The initials of the relevant Medicaid-qualified participants for whom Eubanks provided services are H.A., C.A., D.C., H.C., B.H., C.Ha., C.Hu., C.L., M.L., C.M., N.M., J.P., I.P., S.P., A.P., M.S., E.T., J.W., and L.W.

Eubanks' Record-Keeping and Billing Practices

7. At all relevant times, Eubanks kept a file folder for each participant for whom she provided mental health services.

³ Department Exhibit 1, pp. 8-9.

⁴ Department Exhibit 2.

8. Most, but not all, of Eubanks' progress notes for the participants during 2011 were handwritten, on lined writing pads. Eubanks used a separate pad for each participant for each year, and would sometimes (but not always) write the participant's first and last name, and the year, on the first page of the pad.

9. Eubanks' usual practice regarding each handwritten progress note was to note the participant's first name, and the month and day of a session (but not the year), in a hand-drawn box at the upper right side of the page where the progress note began.

10. In addition to the handwritten progress notes, Eubanks also made 29 other progress notes in word-processed format for the participants' sessions for the review period. Each of these progress notes documented or pertained to a therapy session Eubanks conducted with a participant. The headings for these progress notes showed the participant's first and last names, the date of service including the year, the type of service (family or individual therapy), the service setting (office, participant's home, or elsewhere), the start and end time of the session including an "am" or "pm" notation, and Eubanks' full name. The bodies of these progress notes identified the participant's behaviors and symptoms presented, the goal addressed in the session, and a summary of the session, which included a narrative of the matters discussed and Eubanks' evaluation of the participant's condition. Eubanks prepared these word-processed progress notes as part of a submission to obtain prior authorization for certain services.

11. Prior to June 10, 2010, Eubanks applied to the Department for prior authorization to provide psychological services to D.C. She included several progress notes with the application.

12. On June 10, 2010, the Department sent Eubanks a notice approving her application for prior authorization for providing services to D.C. The documentation the Department sent to Eubanks conveying this approval included a comment that her progress notes

did not contain the first and last names of each family member included in family therapy, and that such content was required.

13. Eubanks maintained a two-day-per-page calendar for 2011 in which she noted participant appointments, as well as those of others. The calendar noted the start time for these appointments, but not the end time, and only identified these people by first names.⁵

14. Sometimes Eubanks' sessions were conducted with the participant alone and sometimes with the participant's family. She would bill separately for individual and family sessions at these times.⁶

The Department's Review of Eubanks' Records

15. The Department conducted a post-payment review of Eubanks' Medicaid claims for the period January 1, 2011 to December 31, 2011 ("the review period").

16. Toni Davis, a Provider Review Analyst for the Department, initiated the review by calling Eubanks on July 9, 2012, informing Eubanks that she would be conducting a review of Eubanks' records.

17. On July 12, 2012, Davis and two other Department analysts, Diane Roling and Cindy Werdehausen, went to Eubanks' office. When they arrived, Davis gave Eubanks a letter dated July 12, 2012. The letter as originally prepared stated that the review would cover the period from April 1 to September 30, 2011. However, Davis made a handwritten change to the letter, extending the period to January 1 to December 31, 2011. Davis made the change because she noticed what she believed to be a problem with Eubanks' record keeping.

⁵ Eubanks Exhibit A. See "Eubanks' missing exhibits" under "Evidentiary Issues" below regarding this exhibit.

⁶ See, e.g., p. 1 of "Claim Detail Report," attached to Department Exhibit 6, specifically the billings for participant H.A. for February 3, March 24, April 21, and May 6, 2011.

18. Davis, Roling, and Werdehausen scanned Eubanks' records into digital format while at Eubanks' office. In order to scan Eubanks' handwritten progress notes, each page of progress notes had to be detached from the pad on which it was written.

19. On April 16, 2013, Davis sent Eubanks a letter asking Eubanks to send copies of any pertinent documentation Eubanks had to support her Medicaid claims.

20. In response to a request for clarification sent to Davis by Eubanks' attorney, Davis sent another letter to Eubanks on May 1, 2013, in which she said that the documentation she sought from Eubanks included, but was not limited to, progress notes, diagnostic assessments, and treatment plans for the 19 participants for the review period.

21. Eubanks sent nothing to Davis in response to Davis' April 16 or May 1 letters.

Errors and Error Codes⁷

22. On October 17, 2013, Davis sent a letter to Eubanks in which she (Davis) set out what Davis claimed were 17 types of billing errors committed by Eubanks on 493 claims Eubanks submitted during the review period. In this letter, Davis demanded repayment of \$25,083.00, as a partial sanction for Eubanks' alleged billing errors.

Error Code A

23. Error code A was used to identify Eubanks' progress notes that did not meet all requirements of 13 CSR 70-3.030(2)(A), 13 CSR 70-98.015(4), or Manual § 13.6.A(3). The Department assessed errors for 311 services billed, and imposed a recoupment sanction of the entire amount billed for those services, for a total of \$16,765.00.

⁷ Exhibit A to this decision is a table showing Eubanks' billings at issue by participant and date of service, the amounts paid to Eubanks for each billing, the Department's original error codes it attached to the billings, the error codes we concluded to have attached to each billing, and figures showing our imposition of a recoupment sanction we found.

24. All of Eubanks' handwritten progress notes lacked an end time for therapy sessions, Eubanks' name, title, and signature, whether the session was conducted before or after 12 noon (am or pm designation), and/or the year in which the service was provided.

25. Most of Eubanks' handwritten progress notes lacked the participant's full name.⁸

26. Some of Eubanks' handwritten progress notes lacked a description of what she did during the session, the place of service, i.e., office or home, the begin time for the session, or the participant's progress towards goals set out in a treatment plan.

Error Codes B, C, and L

27. Error code B was used to identify Eubanks' billings for individual or family therapy, when there was no diagnostic assessment in the participant's record for the date of therapy. The Department assessed errors for 187 services billed, and imposed a recoupment sanction of the entire amount billed for those services, for a total of \$10,096.00.

28. Error code C was used to identify Eubanks' billings for individual or family therapy, when there was no treatment plan in the participant's record for the date of therapy. The Department assessed errors for 190 services billed, and imposed a recoupment sanction of the entire amount billed, for a total of \$10,183.00.

29. Error code L was used to identify Eubanks' billings for diagnostic assessment when there was no diagnostic assessment in the participant's record. The Department assessed errors for 3 services billed, and imposed a recoupment sanction of half of the amount billed, for a total of \$87.00.

30. In her files, Eubanks had current diagnostic assessments and treatment plans for all the participants whose records were reviewed by the Department, except:

⁸ We make no finding regarding precisely how many progress notes lacked information of the sort set out here and in the findings of fact immediately below.

- for two participants, H.C. and A.P., there were no diagnostic assessments or treatment plans in the files at all;
- for two participants, H.A. and J.P., the diagnostic assessments and treatment plans were dated June 2012;
- for one participant, M.S., the diagnostic assessments and treatment plan were dated June 30, 2010; and
- for one participant, B.H., the diagnostic assessment and treatment plan were dated September 21, 2011.

31. M.S. was under 13 years old during calendar year 2011.

32. The earliest relevant date on which Eubanks provided services to M.S. was January 4, 2011, when she provided individual therapy to M.S.

33. Participant B.H. was under 13 years old during calendar year 2011.

34. Eubanks provided services to B.H. between January 5 and September 14, 2011.

35. On September 14, 21, and 28, 2011, Eubanks provided therapy services to participant J.P. However, she miscoded those services as “psychiatric diagnostic interview examination.”

Error Codes D, E, F, G, H, and I

36. Error code D was used to identify Eubanks’ billings for family therapy, when the documentation indicated that she provided individual therapy. The Department assessed errors for 39 services billed, but imposed no recoupment sanction for these errors.

37. Error code E was used to identify Eubanks’ billings for individual or family therapy, when the progress note was not written within 72 hours of the service delivered. The Department assessed errors for 30 services billed, but imposed no recoupment sanction for these errors.

38. Error code F was used to identify Eubanks' billings for individual therapy, when the documentation indicated that she provided family therapy. The Department assessed errors for 12 services billed, but imposed no recoupment sanction for these errors.

39. Error code G was used to identify Eubanks' billings for diagnostic assessment, when the documentation indicated that she provided individual therapy. The Department assessed errors for 2 services billed, but imposed no recoupment sanction for these errors.

40. Error code H was used to identify Eubanks' billings for services for which she indicated the incorrect date of service. The Department assessed errors for 19 services billed, but imposed no recoupment sanction for these errors.

41. Error code I was used to identify Eubanks' billings for diagnostic assessment, when the documentation indicated that she provided family therapy. The Department assessed errors for 3 services billed, but imposed no recoupment sanction for these errors.

Error Code J

42. Error code J was used to identify Eubanks' billings for family therapy, when the documentation indicated there was no way to determine with certainty that a parent was present during the session. The Department assessed errors for 15 services billed, and imposed a recoupment sanction of half of the amount billed, for a total of \$425.00.

43. In sessions for which she billed the Department for family therapy, Eubanks never identified a member of the participant's family either by name or by family designation, i.e., "mom" or "grandma."

Error Code K

44. Error code K was used to identify Eubanks' billings for family therapy, when the documentation did not contain the first and last names of each family member included in the session. The Department assessed errors for 49 services billed, but imposed no recoupment sanction for these errors.

Error Code M

45. Error code M was used to identify Eubanks' billings for services for which there was no documentation in the participant's record. The Department assessed errors for 149 services billed, and imposed a recoupment sanction of half the amount billed, for a total of \$7,198.00.

Error Code N

46. Error code N was used to identify Eubanks' billings for individual or family therapy, when there was no beginning and/or end time of the session in the participant's record. The Department assessed errors for 309 services billed, and imposed a recoupment sanction of half the amount billed, for a total of \$8,368.00.

47. None of Eubanks' handwritten progress notes had an end time for the session in question.

Error Code O

48. Eubanks met with participant B.H. at a Boys and Girls Club in B.H.'s school on March 18, June 17, July 1, September 28, and October 5, 2011. Eubanks billed the Department for sessions conducted at the participant's home for all such occasions.

49. Error code O was used to identify Eubanks' incorrect billings for the place of service. Specifically, this error was imposed when Eubanks billed for the five sessions she conducted at a Boys and Girls Club as described above. The Department assessed errors for 5 services billed, and imposed a recoupment sanction of \$10.00 for each error, for a total of \$50.00.

Error Code P

50. On June 13, 2011, Eubanks attended a court proceeding for participant C.Hu.

51. Eubanks claimed that she met with and counseled C.Hu. before court even though she had no documentation, such as a progress note, to support that claim.

52. Eubanks did not conduct a psychiatric diagnostic interview examination for C.Hu. on June 13, 2011.

53. Error code P was used to identify Eubanks' billings for diagnostic assessment when the documentation showed that the service was not provided. The Department assessed errors for the above-described service and imposed a recoupment sanction of \$29.00 for the error.

Error Code Q

54. On January 31, 2011, Eubanks went to the home of participant C.L. to conduct a therapy session.

55. C.L. was not home when Eubanks got there and did not come home while Eubanks was there.

56. Eubanks counseled C.L.'s family members while at C.L.'s home.

57. Eubanks did not have prior authorization to bill for counseling C.L.'s family members in the absence of C.L.

58. Eubanks billed the Department for family therapy in the absence of the participant for her January 31 counseling session with C.L.'s family.

59. Error code Q was used to identify Eubanks' billings for family therapy when the documentation showed that other family members attended, but the participants did not. The Department imposed a full recoupment sanction of \$58.00 for one session.

Evidentiary Issues

Eubanks' Letter to Commissioner Nelson

On March 19, 2014, Eubanks filed a letter addressed to Commissioner Nelson with the Commission. At the hearing, Eubanks' counsel explained that the letter "include[d] her position, some of her discussions with Ms. Davis, some of the inconsistencies in statements made." At the hearing, Commissioner Nelson ruled that the letter could be introduced into evidence when Eubanks testified, and she (the Commissioner) would rule on its admission then. The letter was never introduced into evidence at the hearing. Accordingly, it is not part of the record other than being in the Commission's file, and we do not consider its contents.

Eubanks' Missing Exhibits

The hearing was conducted at our hearing room in the Wainwright Building in St. Louis. It was transmitted by video and audio to a location in Jefferson City, where one of our staff court reporters transcribed it. At the close of the hearing, Commissioner Nelson, as was her usual practice in such situations, asked the lawyers to deposit their exhibits with the Commission's office in Jefferson City. The Department did so, but the Commission never received Eubanks' marked and admitted exhibits. Those exhibits are described in the transcript as: (A) a planner; (B) billing records; and (D) graph of clients for record review. Our staff contacted counsel to see if these exhibits could be deposited. Counsel for the Department deposited copies of Exhibits A and B with the Commission. Also, on the day of the hearing, counsel for Eubanks filed, by fax, a copy of Eubanks' planner, accompanied by a business records affidavit executed by Eubanks. This document and the Department's version of Exhibit A appear identical, and we treat the document Eubanks filed as Exhibit A. We treat the version of the billing records filed by the Department as Exhibit B.⁹

⁹ Eubanks introduced Exhibit B to support her claim that almost all of her sessions were full-hour sessions, as a rebuttal to the Department's proposed sanction for failure to note end times for sessions under error code N. Since we did not impose a separate recoupment sanction for that error code, we consider the point moot. We could not establish the relevance of Exhibit D, and neither party mentioned it in their post-hearing submissions.

One of this Commission's staff attorneys called counsel for Eubanks three times during a three-week period in August 2014 regarding Eubanks' exhibits. Our staff attorney also called Eubanks' counsel's assistant to inform him of the lack of exhibits. However, this Commission did not hear back from Eubanks' counsel. We are reluctant to issue a decision based on the record as we have it, but we have no other choice.

Conclusions of Law

We have jurisdiction to hear Eubanks' appeal.¹⁰ Eubanks has the burden of proof.¹¹ The Department's answer provides notice of the basis for imposing sanctions.¹² We have discretion to take any action the Department could have taken, and we need not exercise our discretion in the same way as the Department.¹³

Record Keeping Requirements for MoHealthNet Service Providers

The Department's stated reason for imposing sanctions against Eubanks was her failure to adhere to the record-keeping requirements imposed on all MO HealthNet service providers. Upon the Department's request, MO HealthNet service providers are required to timely make available and disclose to the Department "all records relating to services provided to MO HealthNet participants or records relating to MO HealthNet payments[.]"¹⁴ "Records" are "any books, papers, journals, charts, . . . and any other recordings of data or information made by or caused to be made by a provider relating in any way to services provided to MO HealthNet participants and payments charged or received."¹⁵

Adequate documentation means "documentation from which services rendered and the amount of reimbursement received by a provider can be readily discerned and verified with

¹⁰Section 208.156.2, RSMo 2000.

¹¹Section 621.055.1.

¹²*Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

¹³*Department of Soc. Servs. v. Mellas*, 220 S.W.3d 778 (Mo. App., W.D. 2007).

¹⁴Regulation 13 CSR 70-3.030(3)(A)4.

¹⁵Regulation 13 CSR 70-3.030(2)(L).

reasonable certainty.”¹⁶ The required documentation must be legible, made contemporaneously¹⁷ with the delivery of the service, and shall document, among other things, the following:

1. First name, last name, and either middle initial or date of birth of the MO HealthNet participant;
2. An accurate, complete, and legible description of each service(s) provided;
3. Name, title, and signature of the MO HealthNet enrolled provider delivering the service[;]

* * *

5. The date of service (month/day/year);
6. For those MO HealthNet programs and services that are reimbursed according to the amount of time spent in delivering or rendering a service(s) (except for services . . . as specified under 13 CSR 70-91.010 Personal Care Program (4)(A)) the actual begin and end time taken to deliver the service (for example, 4:00-4:30 p.m.) must be documented;
7. The setting in which the service was rendered;
8. The plan of treatment, evaluation(s), test(s), findings, results, and prescription(s) as necessary.
9. The need for the service(s) in relationship to the MO HealthNet participant's treatment plan; [and]
10. The MO HealthNet participant's progress toward the goals stated in the treatment plan (progress notes)[.]¹⁸

Regulation 13 CSR 70-98.015(4) imposes additional record keeping requirements for providers in Psychiatric/Psychology/Counseling/Clinical Social Work Services¹⁹ in which reimbursement is made in the form of a fee per unit of service:

¹⁶Regulation 13 CSR 70-3.030(2)(A).

¹⁷ “Contemporaneous means at the time the service was performed or within seventy-two (72) hours of the time the service was provided[.]” 13 CSR 70-3.030(2)(D).

¹⁸Regulation 13 CSR 70-3.030(2)(A).

¹⁹ Those services are now known as “Behavioral Health Services Programs.” See 13 CSR 70-98.015(4) as amended by 38 Mo. Reg. 1777-78, effective March 30, 2014.

(4) Documentation Requirements for Psychiatric/Psychology/Counseling/Clinical Social Work Services. Documentation must be in narrative form, fully describing each session billed. A check-off list or pre-established form will not be accepted as sole documentation. Progress notes shall be written and maintained in the patient's medical record for each date of service for which a claim is filed. Progress notes for psychiatric/psychology/counseling/clinical social work services shall specify:

(A) First and last name of participant:

1. When family therapy is furnished, each member of the family included in the session must be identified. Description of immediate issue addressed in therapy, identification of underlying roles, conflicts or patterns, and description of therapist intervention;
2. When group therapy is furnished each service shall include the number of group members present, description of immediate issue addressed in therapy, identification of underlying roles, conflicts or patterns, and description of therapist intervention and progress towards goals;

(B) The specific service rendered;

(C) Name of person who provided service;

(D) The date (month/day/year) and actual begin and end time (e.g., 4:00-4:30 p.m.) for face-to-face services;

(E) The setting in which the service was rendered;

(F) Patient's report of recent symptoms and behaviors related to their diagnosis and treatment plan goals;

(G) Therapist interventions for that visit and patient's response;

(H) The pertinence of the service to the treatment plan; and

(I) The patient's progress toward one (1) or more goals stated in the treatment plan.

(5) A plan of treatment is a required document in the overall record of the patient.

(A) A treatment plan must be developed by the provider based on a diagnostic evaluation that includes examination of the

medical, psychological, social, behavioral, and developmental aspects of the participant's situation and reflects the need for psychiatric/psychological/counseling/clinical social work services. If the service is for a child who is in the legal custody of the Children's Division, a copy of the treatment plan shall be provided to the Children's Division in order for the provider to retain reimbursement for the covered service(s).

(B) The treatment plan shall be individualized to reflect the patient's unique needs and goals.

(C) The plan shall include, but is not limited to, the following:

1. Measurable goals and outcomes;
2. Services, support, and actions to accomplish each goal/outcome. This includes services and supports and the staff member responsible, as well as action steps of the individual and other supports (family, social, peer, and other natural supports);
3. Involvement of family, when indicated;
4. Identification of other agencies working with the patient, plans for coordinating services with other agencies, or identification of medications, which have been prescribed, where applicable;
5. Services needed beyond the scope of the organization or program that are being addressed by referral or services at another community organization, where applicable;
6. Projected time frame for the completion of each goal/outcome; and
7. Estimated completion/discharge date for the level of care.

(D) The treatment plan shall be reviewed on a periodic basis to evaluate progress toward treatment goals and outcomes and to update the plan.

1. Each person shall directly participate in the review of his or her individualized treatment plan.
2. The frequency of treatment plan reviews shall be based on the individual's level of care or other applicable program rules. The occurrence of a crisis or significant clinical event

may require a further review and modification of the treatment plan.

3. The individualized treatment plan shall be updated and changed as indicated.

4. Each treatment plan update shall include the therapist assessment of current symptoms and behaviors related to diagnosis, progress to treatment goals, justification of changed or new diagnosis, response to other concurrent treatments such as family or group therapy and medications.

5. The therapist's plan for continuing treatment and/or termination from therapy and aftercare shall be considerations expressed in each treatment plan update.

6. A diagnostic assessment from a MO HealthNet enrolled provider shall be documented in the patient's case record, which shall assist in ensuring an appropriate level of care, identifying necessary services, developing an individualized treatment plan, and documenting the following:

A. Statement of needs, goals, and treatment expectations from the individual requesting services. The family's perceptions are also obtained, when appropriate and available;

B. Presenting situations/problem and referral source;

C. History of previous psychiatric and/or substance abuse treatment including number and type of admissions;

D. Current medications and identifications of any medications allergies and adverse reactions;

E. Recent alcohol and drug use for at least the past thirty (30) days and, when indicated, a substance use history that includes duration, patterns, and consequences of use;

F. Current psychiatric symptoms;

G. Family, social, legal, and vocational/educational status and functioning. The collection and assessment of historical data is also required unless short-term

crisis intervention or detoxification are the only services being provided;

H. Current use of resources and services from other community agencies;

I. Personal and social resources and strengths, including the availability and use of family, social, peer, and other natural supports; and

J. Multi-axis diagnosis or diagnostic impression in accordance with the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association or the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD9-C.M.). The ICD9-C.M. is required for billing purposes.

7. When interactive therapy is billed, the provider must document the need for this service and the equipment, devices, or other mechanism of equipment used.

8. When care is completed, the aftercare plan shall include, but is not limited to, the following:

A. Dates began and ended;

B. Frequency and duration of visits;

C. Target symptoms/behaviors addressed;

D. Interventions;

E. Progress to goals achieved;

F. Final diagnosis; and

G. Final recommendations including further services and providers, if needed, and activities recommended to promote further recovery.

Accordingly, providers of psychiatric/psychology/counseling/clinical social work services were required to produce three types of documentation: a diagnostic assessment, a treatment plan, and progress notes. Section 13.6.A(1) of the MO HealthNet Psychology /

Counseling Manual²⁰ (“the Manual”) reiterated and restated the requirements set out in 13 CSR 70-98.015(4) for diagnostic assessments:

A Diagnostic Assessment from a Medicaid enrolled provider shall be documented in the patient’s medical record. The Diagnostic Assessment shall assist in ensuring an appropriate level of care, identifying necessary services, developing an individualized Treatment Plan, and documenting the following:

- A. Statement of needs, goals, and treatment expectations from the individual requesting services. The family’s perceptions are also obtained, when appropriate and available;
- B. Presenting situations/problem and referral source;
- C. History of previous psychiatric and/or substance abuse treatment including number and type of admissions; documentation of prior/current counseling including date range, purpose, duration and provider
- D. Current medications and identifications of any medication allergies and adverse reactions;
- E. Recent alcohol and drug use for at least the past 30 days and, when indicated, a substance abuse history that includes duration, patterns, and consequences of use;
- F. Current psychiatric symptoms. These current symptoms must address the diagnostic criteria in support of the diagnosis being made.
- G. Family, social, legal, and vocational/educational status and functioning. The collection and assessment of historical data is also required unless short-term crisis intervention or detoxification is the only services being provided;
- H. Current use of resources and services from other community agencies;
- I. Personal and social resources and strengths, including the availability and use of family, social, peer and other natural supports; and

²⁰ Last updated June 27, 2008. A later version is called the Behavioral Health Services Manual. Regulation 13 CSR 70-3.030(1)(A) makes the MO HealthNet provider manuals a part of the Department’s regulations through incorporation by reference.

J. Multi-axis diagnosis or diagnostic impression in accordance with the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association or the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD9-C.M.). The ICD9-C.M. is required on the Treatment Plan for billing purposes.

The Diagnostic Assessment must be signed and dated by the provider delivering the service. The date should reflect the date the service was provided. If the Diagnostic Assessment was completed over a span of days each portion of the Diagnostic Assessment should reflect the date that portion of the service was delivered with the date at the end of the form reflecting the entire Diagnostic Assessment was completed. The dates billed should reflect the dates each portion was delivered.

A Diagnostic Assessment should result in a determination that no further services are required or should be used in developing an individualized Treatment Plan. The Diagnostic Assessment must be current — within one year for adults and adolescents (age 13 to 20) or six months for children under 13.

An update to the Diagnostic Assessment is required in occurrence of a crisis or significant clinical event.

Section 13.6.A(2) of the Manual reiterated and restated the requirements of 13 CSR 70-98.015(5) for treatment plans:

A plan of treatment is a required document in the overall record of the patient. A Treatment Plan must be developed by the provider based on a Diagnostic Assessment that includes:

- Examination of the medical, psychological, social, behavioral, and developmental aspects of the patient's situation and reflects the need for psychology/counseling services.

The Treatment Plan shall be individualized to reflect the patient's unique needs and goals. The plan shall include, but is not limited to, the following:

A. Measurable goals and outcomes;

B. Services, support, and actions to accomplish each goal/outcome. This includes services and supports and the staff member responsible, as well as action steps of the patient and other supports (family, social, peer and other natural supports);

- C. Involvement of family, when indicated;
- D. Identification of other agencies working with the patient, plans for coordinating with other agencies, or identification of medications, which have been prescribed, where applicable;
- E. Services needed beyond the scope of the organization or program that are being addressed by referral or services at another community organization, where applicable;
- F. Projected time frame for the completion of each goal/outcome not to exceed 12 months; and
- G. Estimated completion/discharge date for the level of care.

Documentation required by Missouri Medicaid does not replace or negate documentation/reports required by the Children's Division for individuals in their care or custody. Providers are expected to comply with policies and procedures established by the Children's Division and DMS.

The Treatment Plan must be signed and dated by the provider delivering the service. The Treatment Plan must be current — within one year for adults and adolescents (age 13 to 20) or six months for children under 13.

An update to the Treatment Plan is required in the occurrence of a crisis or significant clinical event.

Section 13.6.A(3) of the Manual reiterated and restated the requirements of 13 CSR 70-98.015(4) for progress notes, and imposed further requirements:

Progress Notes for psychology/counseling services shall be written and maintained in the patient's medical record for each date of service for which a claim is filed. Progress Notes shall specify:

First and last name of patient;

When family therapy is furnished:

- Each member of the family included in the session must be identified. (The family unit is viewed as a social system that affects all its members. A parent must be present 75% of the time to be billed as family therapy.
- The description of immediate issue addressed in therapy.

- Identification of underlying roles, conflicts or patterns,
- Description of therapist intervention must also be identified.

When group therapy is furnished:

- Each service shall include the number of group members present.(Minimum of three but no more than 10 patients)
- Description of immediate issue addressed in therapy, identification of underlying roles, conflicts or patterns.
- Description of therapist intervention and progress towards goals.

When interactive therapy is furnished:

- Documentation of the need for service
- Describe the type of equipment, devices or other mechanisms used

The specific service(s) rendered including the Procedure Code;

Name of person who provided the service;

The date (month/date/year) and the actual begin and end time (e.g., 4:00-4:30 p.m. the face-to-face services;

The setting in which the service was rendered;

The patient's report of recent symptoms and behaviors related to their diagnosis and Treatment Plan goals;

The therapist interventions for that visit and patient's response;

The pertinence of the service to the Treatment Plan; and

The patient's progress toward one or more goals stated in the Treatment Plan.

The progress note must be signed and dated by the provider delivering the service.

The progress note must document the specific service delivered.
The service must be a covered service as defined in Section 13.17
to be billed to Missouri Medicaid.

NOTE: The Missouri Medicaid enrolled provider is the only person who can provide psychology/counseling services and be reimbursed for these services. Services provided by someone other than the enrolled provider are not covered by Missouri Medicaid and may not be billed to Missouri Medicaid by or on behalf of another individual. Services provided by an individual under the direction or supervision of the enrolled provider are not covered.

Monies paid to a provider for services that are not verified by adequate records shall constitute an overpayment.²¹ 13 CSR 70–3.130(1)(E) defines an “overpayment” is “an amount of money paid to a provider by the Medicaid agency to which s/he was not entitled by reason of improper billing, error, fraud, abuse, lack of verification or insufficient medical necessity[.]”²²

Record Keeping Issues

How Eubanks Kept Her Records

Eubanks kept a file on each participant. While we do not know what documents besides progress notes went into each file, we know that she kept handwritten progress notes on lined note pads, starting a new pad for each participant for the year. We also know that she kept diagnostic assessments and treatment plans for some, but not all, of the participants.

For most progress notes, she started a new pad for each calendar year for each participant. On the first page of the pad, she wrote the participant’s first and, sometimes, last name and, sometimes, the year. For each session, she noted the date (but not the year), start time and, sometimes, “ind” and/or “fam” or “family” to indicate whether the session was an individual session, family session, or both. She sometimes, but not often, signed the notes.

²¹Regulation 13 CSR 70–3.130(2)(C)4. However, see “Seriousness of the Offense” below for a discussion of another definition of “overpayment.”

²²Regulation 13 CSR 70–3.130(1)(E).

Copies of the Department's scans of Eubanks' handwritten progress notes constitute most of the Department's Exhibit 8.

Eubanks' Word-Processed Progress Notes

Exhibit 8 also includes 29 word-processed progress notes for participants C.A., C.Ha., C.L., C.M., I.P., S.P., and J.W. These progress notes contained, for the most part, the information Davis pointed out as being missing from Eubanks' hand-written progress notes—participant's full name, date of service including year, service setting, begin and end times for session, Eubanks' full name, and explicit identification of behaviors, symptoms, and goals addressed. Davis testified that it appeared to her that Eubanks had prepared these progress notes to obtain prior authorization for certain services.²³

How the Department Copied Eubanks' Records

When Davis and other employees of the Department went to Eubanks' office to begin scanning the documentation, they detached individual pages from the note pads to scan them. According to Eubanks, the Department personnel returned the individual pages from the pads to her out of order, which led her to suspect Department personnel of failing to copy every page of the documents provided to them. We discuss this issue in greater detail below under "Error Code M."

Grounds for Imposing Sanctions

The Department asserts that Eubanks' failure to adhere to the above record keeping requirements permits the Department to impose sanctions against Eubanks under 13 CSR 70-3.030(3)(A) for the following reasons:

4. Failing to make available, and disclosing to the MO HealthNet agency or its authorized agents, all records relating to services provided to MO HealthNet participants or records relating to MO

²³ Tr. 45.

HealthNet payments, whether or not the records are commingled with non-Title XIX (Medicaid) records. All records must be kept a minimum of five (5) years from the date of service unless a more specific provider regulation applies. The minimum five (5)-year retention of records requirement continues to apply in the event of a change of ownership or discontinuing enrollment in MO HealthNet. Services billed to the MO HealthNet agency that are not adequately documented in the patient's medical records or for which there is no record that services were performed shall be considered a violation of this section. Copies of records must be provided upon request of the MO HealthNet agency or its authorized agents, regardless of the media in which they are kept. Failure to make these records available on a timely basis at the same site at which the services were rendered or at the provider's address of record with the MO HealthNet agency, or failure to provide copies as requested, or failure to keep and make available adequate records which adequately document the services and payments shall constitute a violation of this section and shall be a reason for sanction. Failure to send records, which have been requested via mail, within the specified time frame shall constitute a violation of this section and shall be a reason for sanction;

* * *

7. Breaching of the terms of the MO HealthNet provider agreement of any current written and published policies and procedures of the MO HealthNet program (Such policies and procedures are contained in provider manuals or bulletins which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website www.dss.mo.gov/mhd, October 1, 2007. This rule does not incorporate any subsequent amendments or additions.) or failing to comply with the terms of the provider certification on the MO HealthNet claim form;

* * *

38. Failure to maintain documentation which is to be made contemporaneously to the date of service;

39. Failure to maintain records for services provided and all billing done under his/her provider number regardless to whom the reimbursement is paid and regardless of whom in his/her employ or service produced or submitted the MO HealthNet claim or both;

40. Failure to submit proper diagnosis codes, procedure codes, billing codes regardless to whom the reimbursement is paid and regardless of whom in his/her employ or service produced or submitted the MO HealthNet claim; [and]

41. Failure to submit and document, as defined in subsection (2)(A) the length of time (begin and end clock time) actually spent providing a service, except for services as specified under 13 CSR 70-91.010(4)(A) Personal Care Program, regardless to whom the reimbursement is paid and regardless of whom in his/her employ or service produced or submitted the MO HealthNet claim or both[.]

We separately address each of the 17 categories of error identified by the Department as grounds for imposing the above sanctions. Before doing so, however, we first address the defenses Eubanks has asserted against the imposition of recoupment sanctions for any of the categories of error identified by the Department.

Imposition of Sanctions

Regulation 13 CSR 70-3.030(5)(A) provides that “[t]he decision as to the sanction to be imposed shall be at the discretion of the MO HealthNet agency” The filing of the appeal vested this Commission with the Department’s discretion, but we are not required to exercise it in the same way as the Department.²⁴

Regulation 13 CSR 70-3.030(4) provides in relevant part:

Any one (1) or more of the following sanctions may be invoked against providers for any one (1) or more of the program violations specified in section (3) of this rule:

* * *

(B) Termination from participation in the MO HealthNet program for a period of not less than sixty (60) days nor more than ten (10) years;

(C) Suspension of participation in the MO HealthNet program for a specified period of time;

²⁴*Mellas*, 220 S.W.3d at 782-83.

- (D) Suspension or withholding of payments to a provider;
- (E) Referral to peer review committees including PSROs or utilization review committees;
- (F) Recoupment from future provider payments;
- (G) Transfer to a closed-end provider agreement not to exceed twelve (12) months or the shortening of an already existing closed-end provider agreement;
- (H) Attendance at provider education sessions;
- (I) Prior authorization of services;
- (J) One hundred percent (100%) review of the provider's claims prior to payment;
- (K) Referral to the state licensing board for investigation;
- (L) Referral to appropriate federal or state legal agency for investigation, prosecution, or both, under applicable federal and state laws;
- (M) Retroactive denial of payments[.]

Regulation 13 CSR 70-3.030(5)(A) provides the following guidelines for imposing a sanction:

The following factors shall be considered in determining the sanction(s) to be imposed:

1. Seriousness of the offense(s)—The state agency shall consider the seriousness of the offense(s) including, but not limited to, whether or not an overpayment (that is, financial harm) occurred to the program, whether substandard services were rendered to MO HealthNet participants, or circumstances were such that the provider's behavior could have caused or contributed to inadequate or dangerous medical care for any patient(s), or a combination of these. Violation of pharmacy laws or rules, practices potentially dangerous to patients and fraud are to be considered particularly serious;
2. Extent of violations—The state MO HealthNet agency shall consider the extent of the violations as measured by, but not limited to, the number of patients involved, the number of MO HealthNet claims involved, the number of dollars identified in any overpayment and the length of time over which the violations occurred[:]

3. History of prior violations—The state agency shall consider whether or not the provider has been given notice of prior violations of this rule or other program policies. If the provider has received notice and has failed to correct the deficiencies or has resumed the deficient performance, a history shall be given substantial weight supporting the agency's decision to invoke sanctions. If the history includes a prior imposition of sanction, the agency should not apply a lesser sanction in the second case, even if the subsequent violations are of a different nature;

4. Prior imposition of sanctions—The MO HealthNet agency shall consider more severe sanctions in cases where a provider has been subject to sanctions by the MO HealthNet program, any other governmental medical program, Medicare, or exclusion by any private medical insurance carriers for misconduct in billing or professional practice. Restricted or limited participation in compromise after being notified or a more severe sanction should be considered as a prior imposition of a sanction for the purpose of this subsection;

5. Prior provision of provider education—In cases where sanctions are being considered for billing deficiencies only, the MO HealthNet agency may mitigate its sanction if it determines that prior provider education was not provided. In cases where sanctions are being considered for billing deficiencies only and prior provider education has been given, prior provider education followed by a repetition of the same billing deficiencies shall weigh heavily in support of the medical agency's decision to invoke severe sanctions[.]

Seriousness of the Offense

In considering the seriousness of the offense, we must consider whether an overpayment (financial harm) occurred to the program.²⁵ The Department interprets this provision as equating “overpayments” with “financial harm,” then turning to a regulatory definition of “overpayment” as “an amount of money paid to a provider by the Medicaid agency to which s/he was not entitled by reason of improper billing [or] lack of verification....”²⁶ Eubanks only addresses the matter peripherally, arguing generally that “the state and federal government did not suffer any actual harm by the fact that Ms. Eubanks forgot to include an am or a pm after the start time,

²⁵ 13 CSR 70-3.030(5)(A)1.

²⁶ 13 CSR 70-3.130(1)(E).

forgot to include the patient’s last name on every progress note or forgot to include the year on every progress note.”²⁷

The Department’s motion to reconsider argues that we erred in our construction of 13 CSR 70-3.030(5)(A)1 in that we should have adopted the definition of “overpayment” found in 13 CSR 70-3.130(1)(E):

Overpayment means an amount of money paid to a provider by the Medicaid agency to which s/he was not entitled by reason of improper billing, error, fraud, abuse, lack of verification, or insufficient medical necessity[.]

By the Department’s interpretation, any payment resulting from improper billing or error is an overpayment and therefore is a serious offense. It argues that, by focusing on the parenthetical “financial harm” in the regulation, we “failed to apply the regulatory definition of ‘overpayment’ and instead created [our] own standard.”²⁸

We admit to not applying the definition of “overpayment” from 13 CSR 70-3.130(1)(E), but do not believe that to have been a mistake. First, 13 CSR 70-3.130, the source of the Department’s preferred definition, has little to nothing to do with the Department’s (and this Commission’s) decision as to what sanction to impose. By its own terms, it concerns “Computation of Provider Overpayment by Statistical Sampling,” and its stated purpose is to “[establish] the method where the billing forms or claims for payment submitted by Medicaid providers will be examined to determine compliance with Title XIX (Medicaid) Program requirements and proper payment, and sets forth the statistical methodology to be employed and the manner in which providers may challenge the results.” Finally, 13 CSR 70-3.130(1) reads: “The following definitions will be used in administering *this rule*.” (Emphasis added.) “This rule” can only mean 13 CSR 70-3.130.

²⁷ Eubanks brief p. 13.

²⁸ Department’s motion for reconsideration p. 5.

By contrast, 13 CSR 70-3.030 is titled, “Sanctions for False or Fraudulent Claims for MO HealthNet Services.” Its stated purpose is “[to establish] the basis on which certain claims for MO HealthNet services or merchandise will be determined to be false or fraudulent and lists the sanctions which may be imposed and the method of imposing those sanctions.” Paragraph (5)(A)1 lists “seriousness of the offense(s)” as a factor to consider in determining the sanction(s) to be imposed. In other words, it directly governs the issue here and uses different language to describe “overpayment.”

Had the Department intended to incorporate the definition of “overpayment” from 13 CSR 70-3.130(1)(E) in 13 CSR 70-3.030(5)(A)1, it could have done so, because it promulgated both regulations. Instead, it not only did not make that incorporation, it made what we considered in our original decision, and still consider, to be a parenthetical explanation of what it meant by “overpayment”— overpayment that causes financial harm.

We agree with the Department that financial harm can take a form other than a false or fraudulent billing or a billing at a higher rate than allowed. However, we nonetheless still conclude that the parenthetical referring to “financial harm” limits the scope of the term “overpayment” in 13 CSR 70-3.030(5)(A)1. The Department’s argument requires us to ignore the parenthetical it inserted in 13 CSR 70-3.030(5)(A)1, which ignores a settled rule of statutory (and by extension, regulatory interpretation), that we are to give “significance and effect to every word, phrase, sentence and part” of the law.²⁹

Also, our definition of “overpayment (that is, financial harm)” comports with all but one of the other factors set out in 13 CSR 70-3.030(5)(A)1—substandard services, inadequate or dangerous medical care, potentially dangerous practices, and fraud.³⁰ Applying the interpretive

²⁹ *State ex rel. Jones v. Ralston Purina Co.*, 358 S.W.2d 772, 777 (Mo. banc 1962).

³⁰ The only factor not listed here is violation of pharmacy laws or rules.

maxim *noscitur a sociis*, “a word is known by the company it keeps,”³¹ we conclude that billing errors such as Eubanks committed do not rise to the level of seriousness of substandard services, inadequate or dangerous medical care, or fraud.

The Department cites *Stacy v. Department of Soc. Servs., Div. of Med. Servs.*³² as authority for its position. We disagree. All the Court of Appeals held in that case was that this Commission’s imposition of a \$44,000.00 sanction for not producing records was supported by substantial evidence and was not arbitrary, capricious, or unreasonable.³³ It had no analysis of the seriousness of the provider’s offenses.

We also note the Court of Appeals’ opinion in *Department of Soc. Servs v. Peace of Mind Adult Day Care Ctr.*³⁴ where the Court found no error in this Commission’s finding that while the provider’s failure to retain records and produce them for review constituted a “technical overpayment as that term is defined by DSS regulation” (with a footnote to the definition of “overpayment” in 13 CSR 70–3.130(1)(E)), there was nonetheless no ground for provider sanction.³⁵ (Emphasis added.) What the Department sees as an integral part of what constitutes a serious offense, the Court of Appeals saw as a technical overpayment, and we agree with the Court.

However, at this point the matter is moot. By this amended decision, we have adopted the Department’s recoupment sanctions, with two exceptions— the number of payments recouped for B- and C-code errors (a matter discussed under our analysis of those error codes below), and our conclusion that imposing errors for E, H, J, K, and N-coded violations would be redundant where we also imposed A-coded violations (a matter discussed under our analysis of

³¹ See *Aquila Foreign Qualifications Corp. v. Director of Revenue*, 362 S.W.3d 1, 5 (Mo. banc 2012).

³² 147 S.W.3d 846 (Mo. App. W.D. 2004).

³³ *Id.* at 852-53.

³⁴ 377 S.W.3d 631 (Mo. App. W.D. 2012).

³⁵ *Id.* at 641.

error code A below). Accordingly, we see little use in further analysis of and disagreement over a matter that has no effect on our decision.

Extent of Violations

We must also consider the extent of the violations as measured by, but not limited to, the number of patients involved, the number of claims involved, the number of dollars identified in any overpayment, and the length of time over which the violations occurred. The Department's review involved an entire year of claims during 2011. The Department found errors spread throughout the entire year involving all 19 participants whose records were examined by the Department. Furthermore, for error code A, well over half of the billings examined had errors. Therefore, the extent of the violations was great.

History of Prior Violations

There is no evidence concerning any history of past violations by Eubanks.

Prior Imposition of Sanctions

There is no evidence that the Department had previously imposed any other sanctions on Eubanks.

Prior Provision of Provider Education

Regulation 13 CSR 70-3.030(5)(A)5 provides that the agency may mitigate its sanction if it determines that prior provider education was not provided. On the other hand, a more severe sanction may be implicated if prior provider education was given and the same billing deficiencies were repeated. We cannot consider this factor because we do not have evidence as to whether any provider education was previously provided to Eubanks.

Error Code A – Progress Note Did Not Meet All Requirements

The Department assessed this error code for the 311 times when Eubanks' progress notes allegedly failed to include information required by 13 CSR 70-3.030(2)(A), 13 CSR 70-

98.015(4) and (6), and Manual § 13.6.A(3). It alleges that these errors constitute grounds for imposing sanctions under 13 CSR 70-3.030(3)(A)4 and 7. The Department imposed full recoupment for these errors.

In her testimony, Davis identified the following items as missing in some or all of Eubanks' progress notes: participant's full name, participant's date of birth, name, title and signature of provider, complete date of service (month/day/year), begin and/or end time of service, place of service, what the provider did during the session, and the participant's progress towards goals in the participant's treatment plan.³⁶

The Department argues that these errors merit full recoupment because it has designated the information required by 13 CSR 70-98.015(4) and Manual § 13.6.A(3) to be important and necessary;³⁷ and the Court of Appeals in *Stacy* upheld a similar recoupment sanction.³⁸ Specifically, Davis testified that she assessed full recoupment for each A-code error "because it was so severe. So much of the documentation that was required was lacking . . . there was so many of the records that lacked the essential documentation that that's why I recouped all of it. I couldn't even tell who it was for."³⁹

The Department used two progress notes to illustrate its point. The first was Eubanks' handwritten progress note for participant C.A., dated March 1.⁴⁰ Davis testified that it lacked the year, whether the time of the session was at 8 a.m. or 8 p.m., who the participant or the provider was, what the setting (office, participant's home, elsewhere) was, what happened during the session, and what progress C.A. made.⁴¹

³⁶ Tr. 37-38, 42.

³⁷ The Department cites § 208.201 in support of this argument, but we fail to see the connection between the argument and the statute.

³⁸ 147 S.W.3d 846 (Mo. App. S.D. 2004).

³⁹ Tr. 47.

⁴⁰ The Department's Claim Detail Report shows no entry for March 1, but does show one for March 2. The progress note itself, however, is dated March 1. We assume the March 2 refers to this progress note.

⁴¹ Tr. 43-44.

Davis contrasted that note with one written for Eubanks' session with C.A. for July 11. This note was one of Eubanks' word-processed notes, a type we discuss above. As we describe these notes above under "Eubanks' Word-Processed Progress Notes," this note had more detailed information—specifically, the information required by 13 CSR 70-98.015(4).

In response, Eubanks points out that there was enough information in her files for the Department to organize the notes (both handwritten and word-processed) in a coherent order for purposes of creating Exhibit 8. In addition, Eubanks argues that much of the missing information could be corroborated by her calendar, which would show the date and the start time. Eubanks also argued that the participant's full name was easily found, as it was on the folder in which the progress notes were kept. However, Eubanks' calendar does not provide as much support for her position as she asserts. First, while her calendar typically does supply start times in cases where she failed to indicate a start time on the progress note,⁴² it rarely, if at all, provided information about the end time or the participant's full name (Eubanks usually identified participants by first name), and of course said nothing about therapeutic progress.

Eubanks also argues that it was "disingenuous" for the Department to claim that it could not identify the participant, because the Department was able to organize the notes by participant in order to create Department Exhibit 8.⁴³ We agree. However, we disagree with Eubanks' related, more general position, that enough of the information can be found elsewhere (her calendar, elsewhere in the file) so as to negate the alleged errors. Regulation 13 CSR 70-98.015(4) imposes requirements for the contents of *progress notes*; it says nothing about the required information being in a place from which it could be recovered in case it was needed or, in this case, in the event of an audit.

⁴² She provided no specific examples of this occurrence, however.

⁴³ Eubanks brief p. 4.

Finally, Eubanks argues that Davis created the problem of missing information by tearing the individual progress notes out of the note pads in which they were originally kept; much of the alleged “missing” information, she argues, is furnished by the context in which she took and kept those notes, something we describe above under “How Eubanks Kept Records Generally,” and “How the Department Copied Eubanks’ Records.” As we set out there, we find the copies of her records with which we were furnished to be sufficiently complete and comprehensible to understand Eubanks’ record keeping procedures.

The Department’s Motion for Reconsideration

In our original decision, we did not impose any recoupment for the A-coded errors. The Department asked us to reconsider that decision. In support of these arguments, the Department argues that we improperly shifted the burdens of pleading and proof to it. We look at the two burdens individually.

Notice of Eubanks’ Alleged Errors

In our original decision, we stated that under ***Ballew v. Ainsworth***,⁴⁴ the Department was obligated to give notice of the basis for the imposition of sanctions. In its motion, the Department first argues that ***Ballew*** is not on point because it concerns an agency’s denial of a license. True, the subject matter of that case is different from this one, but the principle is the same— because of the nature of that (and this) type of case, the agency’s answer must give notice of the alleged violation. We concluded in our original decision that the Department did not fulfill that obligation, and our opinion has not changed.

The Department should not be surprised by our application of ***Ballew***. We have cited it for this precise rule of law in several prior cases where, as here, the Department sought to recoup

⁴⁴ 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

sums paid to Medicaid providers.⁴⁵ What we did not have to do in those cases is apply it in the way we applied it in our original decision in this case— because in those cases, the Department’s answer not only set out what errors the provider allegedly committed, but described those errors with error codes that described a particular error, i.e., not entering documentation in the patient’s record within 72 hours of the service provided or not entering a start or stop time on a progress note.

Here, we believe the Department broke new ground— not only did it find errors for individually identifiable, particularized violations of the applicable regulations, but it created a new, omnibus error code, error code A, which determined that an error had been committed when the provider “billed for individual or family therapy when the progress note [did] not meet all requirements.” The best way to illustrate how this error code differed from all the others is to list those other codes and what constituted an error under each:

- B- no diagnostic assessment in participant’s record for date of therapy
- C- no treatment plan in the participant’s record for the date of therapy
- D- Billed incorrect procedure code (family therapy) when the documentation indicated individual therapy was provided
- E- not entering documentation in the patient’s record within 72 hours of the service delivered
- F- Billed for diagnostic assessment when the documentation indicated individual therapy was provided
- G- Billed for diagnostic assessment when the documentation indicated family therapy was provided
- H- billed incorrect date of service according to documentation in record
- I- Billed for family therapy when the documentation indicated individual therapy was provided
- J- billed for family therapy...when according to the documentation there is no way to determine that a parent was present during the session
- K- billed for family therapy when documentation did not contain first and last names of each family member included in session

⁴⁵ See, e.g., *Loving Care Home v. Department of Soc. Servs., Mo HealthNet Div.*, No. 10-0291 SP (Mo. AHC, Mar. 12, 2012, Winn, C.) at *31 n. 26; *Ozarks Med. Ctr. v. Department of Soc. Servs., Mo HealthNet Div.*, No. 12-0140 SP (Mo. AHC, Mar. 17, 2014, Nelson, C.) at *14 n. 22; *Home Healthcare Servs. Unlimited, LLC v. Department of Soc. Servs., Mo HealthNet Div.*, No. 09-0810 SP (Mo. AHC, Mar. 1, 2011, Dandamudi, C.) at *3 n. 11.

- L- billed for diagnostic assessment when there was no diagnostic assessment in participant's record
- M- billed for services for which no documentation was found in participant's record to support the service billed for that date of service
- N- billed for therapy with no documentation for start and/or end times or any indication of time actually spent with participant in participant's record
- O- billed showing place of service as "home" instead of "office"
- P- billed for diagnostic assessment when documentation shows service was not provided
- Q- billed for family therapy when documentation shows that only parent or guardian was present.

Error codes B through Q describe a particular thing missing or done incorrectly. Some errors were major (no diagnostic assessment, no treatment plan, no progress note), while others were minor (first and last names of family members were not given, place of service was billed as "home" instead of "office"). However, they all differed from error code A in that they describe a particular error, while error code A simply alleges that Eubanks had violated one or more of the numerous requirements of two regulations and the Provider Manual.

The issue here is larger than whether **Ballew** applies or was complied with. A closer reading of **Ballew** demonstrates that larger issue:

In any case involving the denial of a license by an agency included in the Administrative Hearing Commission Act, the answer filed by the agency frequently takes on a significance which surpasses that of an answer in the ordinary context of civil pleading.... When [the agency refuses to issue a license], the applicant is notified of his right to file a complaint with the AHC, in which complaint the applicant must "set out with particularity" his qualifications for the license he seeks. If, at the hearing, the applicant establishes his qualifications for examination for licensure or for licensure, the AHC issues "an appropriate order to accomplish such examination or licensure ...". Thus, unlike most civil proceedings where the basic issues are set out in the first pleading and effectively joined by a simple denial, the issues in a refusal-to-license case often cannot be discerned with certainty until the agency files its answer stating the reason for its refusal. In such instance, the second pleading, the answer, *serves the basic function of "notice" in the sense of due process to the applicant.*

(Emphasis added and internal citations omitted.) Similarly, in this case, by simply alleging that one or more requirements of one or more regulations (or a manual that was incorporated by reference) were violated, error code A failed to give sufficient notice of what errors Eubanks committed to satisfy due process requirements.

Our ultimate decision, however, is again found in *Ballew*. In that case, even though the Court of Appeals held that the agency’s answer was not specific enough to satisfy due process, it nonetheless held that it was not an abuse of discretion for this Commission to refuse to strike the allegedly deficient portions of that answer, because the applicant “[did] not claim that his ability to prepare his case was in any way impaired by the lack of specificity in the answer”⁴⁶

Similarly, in this case Eubanks made no such claim.

Eubanks Had the Burden of Proof on this Issue

In our original decision, we acknowledged that § 621.055.1 places the burden of proof in cases such as this one on the provider, but did not elaborate. In its motion to reconsider, the Department alleged that we “mistakenly placed the burden of proof on [it] to prove the basis for its recoupment sanction.”⁴⁷ Later, it elaborates (and amends) its argument to say that, by imposing the more rigorous pleading standard we discuss above, we “essentially [switched] the burden of proof to [it.]”⁴⁸

While we did not analyze the burden of proof issue in depth in our original decision, we do so here. The Supreme Court instructs that there are two components to the burden of proof: the burden of producing (or going forward with) evidence and the burden of persuasion.⁴⁹ In this case, we agree with the Department—Eubanks did not meet her burden of proof, because she did not go forward with evidence to prove this aspect of her case.

⁴⁶ *Ballew*, 670 S.W.2d at 103.

⁴⁷ DHSS’s motion to reconsider pp. 3-4.

⁴⁸ *Id.* p. 10.

⁴⁹ *Kitzenbaw v. Director of Revenue*, 62 S.W.3d 49, 53 (Mo. banc 2001).

Eubanks' Response to the Department's Motion for Reconsideration

Eubanks's response to the Department's motion to reconsider alleges first that the Department's motion "seeks to challenge the authority of the Commission to exercise discretion in determining the ultimate sanction amount."⁵⁰ Eubanks then alleges that the Department failed to establish a *prima facie* basis in fact for imposing sanctions under error code A, but only provided general conclusions of fault that fail to shift the burden of proof to her.

We agree with Eubanks's first argument, but that argument is far from dispositive. The problem with Eubanks's second argument is that nothing is required to shift the burden of proof to her— § 621.055.1 does that. Had the legislature intended to create a burden-shifting procedure, it would have done so.⁵¹ Instead, Eubanks bore the burdens of going forward with the evidence and persuading us of her case. She did neither one.

The general rule is that the party not bearing the burden of proof need not offer any evidence concerning it.⁵² We see nothing to alter that general rule. On reconsideration, therefore, we conclude that Eubanks's failure to meet her burden of proof mandates a conclusion against her with regard to error code A.

Conclusion Regarding Error Code A

We continue to have doubts regarding the validity of error code A. Unlike every other error code, it does not identify a single error Eubanks committed, but instead made it a separate error to omit one or more of a number of required elements from a progress note. We still believe that there is a due process issue with this error code. However, that argument was Eubanks's to make as part of her statutory burden of proof, and on reconsideration, we no longer make it for her.

⁵⁰ Eubanks' response to the Department's motion for reconsideration p. 1.

⁵¹ See *Hewitt Well Drilling & Pump Serv. v. Director of Revenue*, 847 S.W.2d 795, 797-98 (Mo. banc 1993) (applying similar statutory language from § 621.050.2).

⁵² *White v. Director of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010).

For the above-stated reasons, we impose full recoupment for the 311 A-coded errors Eubanks committed.

Error Codes B, C and L – No Diagnostic Assessment or Treatment Plan

We analyze these error codes together because the B- and C-code errors arise from the absence of current diagnostic assessments and treatment plans for some of Eubanks' participants, and the Department calculated its recoupment sanction for both the same way. We include error code L here as well because it, too, arises from a missing diagnostic assessment. We discuss it separately below. The Department alleged the following:

- in two cases (H.C. and A.P.), there were no diagnostic assessments or treatment plans in the files at all;
- in two other cases (H.A. and J.P.), the diagnostic assessments and treatment plans were dated June 2012, well after the audit period of 2011;
- in a fifth case (M.S.), the diagnostic assessments and treatment plans were dated June 30, 2010; because M.S. was 9 years old in January 2011, those documents had to be less than six months old to be current, and they lost their currency on December 30, 2010, before the beginning of the audit period; and
- in the last case (B.H.), the diagnostic assessment and treatment plan were dated September 21, 2011, but Eubanks had provided services to the participant between January 5 and July 18, 2011, before the dates of the diagnostic assessment and treatment plan.

Error Code B—No Diagnostic Assessments

The Department assessed sanctions for error code B for the 187 times when Eubanks allegedly billed for sessions for which there was no current diagnostic assessment. Regulation 13 CSR 70-98.015(5)(D)6 requires a provider to have a current diagnostic assessment for every participant. Manual § 13.6.A (1) requires a diagnostic assessment to be less than a year old (for teenagers or adults) or less than six months old (for children under age 13) to be current. The Department alleges that these errors violated 13 CSR 70-98.015(3)(A)1, (4), (5) (D)6, and (6), and Manual § 13.6.A (1). It also alleges that these errors constitute grounds for imposing

sanctions under 13 CSR 70-3.030(3)(A)4, 7, 38, and 39. The Department imposed full recoupment for these errors.

Error Code C- No Treatment Plans

The Department assessed sanctions for error code C for the 190 times when Eubanks allegedly billed for sessions for which there was no current treatment plan. 13 CSR 70-98.015(5) requires a provider to have a current treatment plan for every participant. Manual § 13.6.A(2) requires a treatment plan to be less than a year old (for teenagers or adults) or less than six months old (for children under age 13) to be current. The Department alleges that these errors violate 13 CSR 70-98.015(3)(A)1, (5), and Manual § 13.6.A(2) and (4). It also alleges that they constitute grounds for imposing sanctions under 13 CSR 70-3.030(3)(A)4, 7, 38, and 39.

Error Code L- (Also) No Diagnostic Assessments

The Department assessed sanctions for error code L for the three times when Eubanks allegedly billed the Department for a diagnostic assessment service, but there was no diagnostic assessment in the record. It cites 13 CSR 70-98.015(3)(A)1, (4), and (6), and Manual §§ 2 and 13, as requirements Eubanks did not meet. The Department alleges that these errors violated 13 CSR 70-98.015(3)(A)1, (5), and Manual § 13.6.A(2) and (4). It also alleges that these omissions constitute grounds for imposing sanctions under 13 CSR 70-3.030(3)(A)4, 7, 33, and 38.

*Eubanks' Records Lacked
Six Diagnostic Assessments and Six Current Treatment Plans*

As we set out in our findings of fact above, there were two participants, H.C. and A.P., for whom there were no diagnostic assessments or treatment plans at all. For H.A. and J.P., the diagnostic assessments and treatment plans were dated June 2012, well after the review period of calendar year 2011. For participant M.S., the diagnostic assessment and treatment plan were dated June 30, 2010, more than six months before the earliest date in the review period (January 4, 2011) when Eubanks provided services. For participant B.H., Eubanks provided services to that

participant between January 4 and September 14, 2011 – dates for which there was no current diagnostic assessment or treatment plan in Eubanks’ files.

In response to these allegations, Eubanks first argues that, “to receive payment from the state, [she] must have submitted a diagnostic assessment form to the state as a condition precedent to reimbursement. The fact that the state is seeking reimbursement under [error Code] L proves that payment was made to [her] for her submission of a diagnostic assessment.”⁵³ However, Eubanks cites no authority, either from the record or the law, in support of her first sentence, and we find no such authority, and we note that the Department imposed sanctions for error code L for only three billings for one patient, and those three billings were not the subject of a B error code. Therefore, we disregard this argument.

Eubanks also raises the general argument that Davis forbade her from providing additional documents, and she was subsequently unable to recover them due to a hard drive failure. We consider, and reject, this argument above under “Eubanks’ Reasons Why She Did Not Provide Documentation.”

Eubanks finally argues that, at the hearing, Davis testified that a provider could appropriately bill for therapy, even though there was no current diagnostic assessment. Without reprising the actual testimony, we apply the applicable law as stated in the Manual, as opposed to applying Davis’ testimony to the contrary. Doing so, we disagree with Eubanks’ argument, and conclude that she took Davis’ testimony out of context.

Eubanks committed 12 errors, not 380 errors

We agree that Eubanks’ failures to have current diagnostic assessments and treatment plans in her files are serious errors. For each of the six participants whose records are at issue

⁵³ Eubanks brief p. 6.

here, we found that the diagnostic assessment and/or the treatment plan was either missing or did not meet the currency requirements of §§ 13.6.A(1) and 13.6.A(2) of the Manual.

But we disagree with the Department as to the scope of the errors it assessed. The Department assessed these errors for every session (187 in all) for which there was no current diagnostic assessment. Similarly, it imposed 190 errors for every session when there was no current treatment plan. To impose such a sanction, Eubanks would have to violate one or more regulations every time she billed for a therapy session without there being any diagnostic assessment or treatment plan in the participant's file. None of the regulations the Department cites says anything about billing for a therapy session in that situation as being a violation. Instead, the violation occurs when a provider fails to have a current diagnostic analysis or treatment plan for a participant. The Department cites no authority, and we know of none, for its proposition to the contrary.

As for error code L, the Department applied it on only three occasions— for billings for services to J.P. for September 14, 21, and 28. As we state above, the error code was imposed when Eubanks billed the Department for a diagnostic assessment service, but there was none in the record. However, we conclude from Eubanks' progress notes for those dates that Eubanks conducted therapy sessions with J.P. Those progress notes document discussions about J.P.'s general welfare and condition as reflected in her current activities and experiences, not any sort of psychiatric examination or evaluation. Furthermore, the only diagnostic assessment in the file for J.P. was dated June 2012, nine months *after* the dates of the service(s) in question. In any case, Eubanks had no current diagnostic assessment for J.P. on those dates, just as she had none for J.P. for any date in 2011. Therefore, the only errors we see are erroneous codings of Eubanks' billings; taking the content of her progress notes for those dates at face value, the

services should have been coded as individual therapy (90806), not psychiatric diagnostic interview examination (90801).

Accordingly, we conclude that Eubanks committed 12 errors: six times she failed to have current diagnostic assessments in her participants' files, and six times she failed to have current treatment plans in those files. We therefore impose a sanction of \$58.00, the maximum billing unit used by Eubanks, to each error, for a total of \$348.00 each for error codes B and C. For the reasons stated above, we find no separate error for error code L, and therefore no grounds for sanctions.

Error Code D— Billed for family therapy when
documentation indicated that individual therapy was provided

Error Code E— Progress note not written within 72 hours of session

Error Code F— Billed for individual therapy when
documentation indicated that family therapy was provided

Error Code G— Billed for diagnostic assessment when
documentation indicated that individual therapy was provided

Error Code H— Billed incorrect date of service

Error Code I— Billed for diagnostic assessment when
documentation indicated that family therapy was provided

Error Code K- Billed for services when documentation did not contain first
And last names of participants

Eubanks does not contend that these error codes are invalid, and the Department seeks no recoupment for these errors. Furthermore, neither party presented any argument or authorities for these codes. Because, as we state above, § 621.055.1 places the burden of proof on Eubanks, we consider Eubanks to have admitted them. However, as we state above in our analysis of error code A, we consider error codes E, H, and K to be subsumed into error code A and do not assess them as separate errors for those billings where the Department also assessed error code A.

Accordingly, since we impose the sanction of pre-payment review for Eubanks' actions and

omissions generally, we impose no recoupment or any sanctions for these errors other than pre-payment review.

Error Code J— Billed for family therapy when documentation
did not indicate presence of family member

The Department assessed sanctions for this error for the 15 times when, allegedly, Eubanks had billed for conducting family therapy, but there was no way to determine with certainty that a parent⁵⁴ was present during the session. It cites 13 CSR 70-98.015(4)(A)1, 4, and 6 and Manual §§ 13.6.A(3) and 13.22 as setting out the relevant requirements, and alleges that Eubanks is subject to sanctions under 13 CSR 70-3.030(3)(A)4 and 7. The Department imposed a recoupment of half of what was paid to Eubanks for the billings in question.⁵⁵

Eubanks responds that she sufficiently identified the family member in the progress notes because in those notes she would refer to “mom” or “grandma.”⁵⁶ She also argues that the Department “created a standard not found in the regulations” by assessing an error for requiring first and last names of family members in progress notes,⁵⁷ and finally argues that she “provided sufficient evidence with her reference to another individual being present in the therapy sessions to make her billing for family sessions appropriate.”⁵⁸ The Department responded to Eubanks’ last argument by pointing out that Eubanks’ failure to identify family members by first and last name was a K-code, not a J-code, violation.

As to Eubanks’ assertion that referring to the family members by “mom” or “grandma” or the like was sufficient to meet the regulations, we find no evidence that she did so. However, we disagree with the Department’s position that the regulation or Manual sections it cited required the identification of a *parent*. 13 CSR 70-98.015(4)(A)1 and Manual § 13.6.A (3) require that

⁵⁴ In its brief, the Department altered its allegation to “parent or guardian,” but we use the allegation made in the October 17 letter and the Department’s answer.

⁵⁵ Tr. 54.

⁵⁶ Tr. 203-04; Eubanks brief p. 8.

⁵⁷ Eubanks brief p. 8.

⁵⁸ *Id.*

“each member of the family included in the session must be identified.” It says nothing about that family member having to be a parent or guardian. To the contrary, Manual § 13.22 states, “A family may be biological, foster, adoptive, or other family unit.” But there is no evidence that Eubanks satisfied the requirements as they are written. We found no instance, and Eubanks identified none, where a specific progress note identified a family member.

In our original decision, we agreed with the Department’s imposition of half of what Eubanks was paid for each J-coded error. However, as we state above under “Multiple Errors Assessed for the Same Omission,” the Department typically assessed error codes A and J for the same omission, and we see no reason to impose multiple errors for the same omission. For this error code, it imposed error code A in every occasion but one (C.M., 9/22). For that one error, we also order recoupment of half of what Eubanks was paid.

Error Code M—Billed for services for which no documentation was found
in the participant’s record to support the service filled for that date

The Department assessed this error code for the 149 times when Eubanks allegedly billed for sessions, but for which no progress note was in her files. Regulation 13 CSR 70-98.015(4) requires documentation for each session billed, and that such documentation “shall be written and maintained in the participant’s medical record for each date of service for which a claim is filed.” The Department alleged that these errors constitute grounds for imposing sanctions under 13 CSR 70-3.030(3)(A)4, 7, 33, and 38. The Department imposed full recoupment for these errors.

In response, Eubanks tries to cast doubt on whether Davis and her co-workers who scanned Eubanks’ records actually retrieved all of them. The fact remains that Eubanks, and not the Department, has the burden of proof. Davis testified that Exhibit 8, the scanned copy of the progress notes in question, was “[a] fair and accurate representation of the progress notes [she]

collected from [Eubanks].”⁵⁹ Eubanks offered no objection to their admission into evidence, and did not question the completeness of that exhibit at the hearing.

However, in her brief, Eubanks denies that any progress notes were missing before Davis and her co-workers scanned them. She makes this allegation based on her testimony that for every therapy session she conducted, she prepared contemporaneous progress notes. Therefore, she testified, “there shouldn’t be any missing progress notes.”⁶⁰ However, we give more weight to the Department’s assertion that Exhibit 8 contains all the records provided by Eubanks and make our conclusions according to those records.

As for the appropriate sanction, while Davis did not explain why she imposed full recoupment for these errors, we fully agree that the absence of a progress note for a day in which a session was allegedly held is a serious error, and that full recoupment is appropriate. However, we discovered a conflict between how the Department assessed M-code errors and the wording of the applicable regulation. In a number of cases, as we set out above under finding of fact 14, Eubanks sometimes submitted two billings for a single participant for a single day— one for family therapy session and one for individual therapy. The Department assessed one or more errors for each billing.

However, 13 CSR 70-98.015(4) says:

Documentation must be in narrative form, fully describing each session billed.... Progress notes shall be written and maintained in the patient's medical record *for each date of service for which a claim is filed*.

(Emphasis added.) In other words, the regulation requires only one progress note for each *date* of service for which a claim is filed— not a progress note for each claim filed. Therefore, we do not assess errors for dates in which Eubanks filed two claims but made one progress note

⁵⁹ Tr. 36.

⁶⁰ Tr. 205.

because in those cases she complied with the regulation. And when Eubanks had no progress note for a date on which she billed twice, we only assess one error, not two, because the regulation requires only one progress note for each date.

Also, in five cases (D.C. 1/26, A.P. 2/10, J.W. 7/8, J.W. 7/29, J.W. 8/26), we found progress notes for participants and dates in which the Department assessed an error for no progress note being there.

After making those adjustments, we found 88 M-code errors. Because we consider the failure to have a record of a session to be a serious error, we impose full recoupment for those 88 errors.

Error Code N- Billed for services with no documentation of begin and/or end time
or any indication of time actually spent with participant

The Department assessed sanctions for this error for the 308 times when, according to her records, Eubanks allegedly did not enter a beginning time, ending time, or the duration of her sessions. The requirement of actual beginning and ending times for progress notes is imposed by 13 CSR 70-98.015(4)(D). The Department alleged that these violations rendered Eubanks subject to sanctions under 13 CSR 70-3.030(3)(A)4, 7, 40, and 41.

According to Davis, if the begin and end times were entered on Eubanks' calendar, and the first and last names of the participant were on both the progress note and the calendar entry for the same day, she would take that information into consideration. However, she pointed to no such situation, and we found none.

Eubanks countered that, while she did not include a session end time, she always included a session start time (which is, by and large, true), and that 95% of the time, she

completed a full session with her participants, which by her standards was a full hour, not the 45-minute session time specified.⁶¹

Our review of the underlying documentation (progress notes and calendar) showed that, with two exceptions,⁶² *none* of Eubanks' handwritten progress notes had end times. For that matter, her calendar entries had no end times either. However, most of them had start times. We did not count how many, just as the parties did not do so. Therefore, we consider this error to consist solely of Eubanks' failure to indicate end times on her handwritten progress notes.

Furthermore, the error was not as universal as the Department alleged. In three cases, (C.M. 8/18, 8/23, 8/29), there were word-processed progress notes for the same date and start time as the handwritten progress notes, and the word-processed notes had end times. And for one N-code error (J.W. 8/20), there was only one progress note (word-processed), and it had a start and end time. Therefore, we find only 305 errors, not 309.

In our original decision, we stated that we are not persuaded that the omission of an end time was a "serious offense" as described in 13 CSR 70-3.030(5)(A)1. Accordingly, we concluded that Eubanks committed 303 N-code errors, and imposed a recoupment sanction of \$10.00 per error, for a total of \$3,040.00. On reconsideration, because we consider this error code to be subsumed into error code A, we assess no errors where error code A was already assessed. As it turns out, every N-coded error was also an A-coded error. Therefore, we find no N-coded errors.

Error Code O- Billed Incorrect Place of Service (Home Instead of Office)

The Department assessed sanctions for this error for five billings for services rendered to B.H. (3/18, 6/17, 7/1, 9/28, 10/5). In each case, the progress note states that Eubanks met with

⁶¹ Tr. 199. Neither party set out where this time requirement was specified, and it is not important to our decision.

⁶² CHu, 6/13, and CM, 9/29. The first progress note had no end time either, while the second shows two times, which may or may not be a start and an end time.

B.H. at a Boys and Girls Club. However, Eubanks billed the Department for a home session. The Department assessed the error because, it explained, providers like Eubanks may bill more for home sessions than office sessions (\$10.00 more in this case). However, there was no billing location that fit the Boys and Girls Club.

The Department also argues that § 13.27 of the Manual provides that an office code may be used for locations where the provider routinely provides services, giving the example of a Head Start Program location. Accordingly, the Department argues, the error code is appropriate and a \$10.00 recoupment for each error is appropriate. The Department alleged that these actions violated 13 CSR 70-98.015(4) and Manual §§ 13.6.A and 13.27. Those violations, the Department further alleged, rendered Eubanks subject to sanctions under 13 CSR 70-3.030(3)(A)4, 7, and 40.

Eubanks argues that the Boys and Girls Club was located on school grounds, and she met B.H. there after school had let out for the day. She billed for home visits, she argues, because she had to travel to the school, and incurred a \$5.00 expense for every such visit. That rationale, however, does not defeat the Manual's requirement regarding appropriate billing. We therefore agree with the Department and impose a sanction of \$10.00 for the five billings referenced above.

Error Code P— Billing for Psychiatric Diagnostic Interview Examination When Documentation Shows Service Not Provided

The Department imposed sanctions for this error in one situation, a billing for C.Hu for June 13. According to the Department, Eubanks billed for performing a psychiatric diagnostic interview examination for C.Hu. However, the Department alleged, the documentation only indicated that Eubanks attended court on that date on C.Hu's behalf. The Department further cites § 13.2 of the Manual as requiring that the services for which Eubanks billed include particular types of activities (interview with the child, parent report, teacher report) with the

participant present. Attending court, the Department argues, is not one of those activities, and accordingly it imposed full recoupment. The Department alleged that these actions violated 13 CSR 70-98.015(3)(A)1, (4), and (6), and Manual §§ 2 and 13. Those violations, the Department further alleged, rendered Eubanks subject to sanctions under 13 CSR 70-3.030(3)(A)4, 7, 33, and 38.

Eubanks responds that she did much more for C.Hu than merely attend court, specifically meeting with and counseling C.Hu before going to court.⁶³ There are two problems with Eubanks' argument. First, she did not bill for a counseling session, but for a psychiatric diagnostic interview examination. However, merely miscoding a billing is not, in our opinion, grounds for recoupment. The other problem with this error is that, by Eubanks' admission, there is nothing in her records about the counseling session. Therefore, the counseling session Eubanks described in her testimony had no documentation in the record. This is the same sort of error that we found for M-coded errors, and merits the same sanction, full recoupment.

Error Code Q- Billed for Family Therapy When Only
Family Members Were Present

The Department imposed sanctions for this error for one session billed for one participant (C.L., 1/31) in which the participant never showed up, so Eubanks met with one or more parents or guardians, and billed it as a family session. The Department cites § 13.22 of the Manual as saying that both a parent and a child must be present for at least 75% of a family therapy session. It also cites § 13.2 of the Manual as requiring prior authorization for a family therapy session without the participant present. Eubanks did not have prior authorization. The Department alleged that these actions violated Manual § 13.2. Those violations, the Department further alleged, rendered Eubanks subject to sanctions under 13 CSR 70-3.030(3)(A)4, 7, and 40.

⁶³ Tr. 211.

Eubanks counters that pre-authorization would not have been possible in this situation (the participant did not come home and was not on the bus on which (s)he was expected) and, since the family sought counseling from Eubanks anyway, we should not impose recoupment. The problem with this argument is not the propriety of counseling family members in the absence of the participant, but billing the session as a family therapy session when, according to the Manual, it would not qualify for any reimbursement. Because it did not qualify, Eubanks was not entitled to reimbursement for performing the service, and full recoupment for the one occurrence is appropriate.

Eubanks' General Positions and Defenses

Eubanks raised several defenses that applied to more than one error code. While we analyze the parties' positions for each error code individually above, some of Eubanks' defenses and positions apply to multiple situations, so we set them out here.

Eubanks' Reasons Why She Did Not Provide More Documentation

Eubanks testified that Davis told her not to add anything to the files that Davis audited.⁶⁴ The result, Eubanks asserts, is that she was precluded from including relevant documents, the absence of which form the basis for some of the Department's claims against her. However, Davis' letter to Eubanks of April 16, 2013 requested Eubanks to send to her (Davis) "copies of any pertinent documentation you have to support [the claims in question in this case]."⁶⁵ Then in her May 1, 2013 letter to Eubanks, Davis clarified the scope of the request, asking Eubanks to "pull all available documentation (including, but not limited to, progress notes, diagnostic assessments and treatment plans) to support [the claims in question in this case]."⁶⁶

⁶⁴ Tr. 222-23.

⁶⁵ Department Exhibit 4.

⁶⁶ Department Exhibit 5.

Later (she alleges in her brief), when it became apparent that it would benefit Eubanks to produce documents in aid of her cause, she discovered that she could not access documents on her computer, due to a hard drive failure. She argues that, had Davis “authorized [her] to pull documents from her computer and place them in the individual patient files, many of the alleged violations set forth in [error codes] B and C could have been shown to be invalid.”⁶⁷

Eubanks cites to her testimony on page 228 of the transcript in support of her hard drive failure defense.⁶⁸ However, her testimony there was that she overwrote documents on her computer, not that her hard drive had crashed.

Eubanks also testified that she could not produce all of the documents Davis asked for because, as she testified, “Often times people ask for a copy [of a document]. If I have a copy in my file, I will give it away not always remembering to print off a new copy for my file because, again, I knew I had it on my computer.”⁶⁹

In any case, as we stated at the beginning of these conclusions of law, Eubanks has the statutory burden of proof. That burden includes the burden of production.⁷⁰ Specifically, Eubanks’ argument that Davis ordered her not to produce other documents is belied by Davis’ two letters to Eubanks we discuss above, which specifically invite Eubanks to produce additional documentation in support of the claims at issue.

*Eubanks’ Errors are Only Recordkeeping Errors;
There was no Allegation of Substandard or Inappropriate Care,
Failure to Provide Services, or Fraud*

As a general defense against the various categories of error asserted by the Department, Eubanks asserts that the Department failed to establish that Eubanks did not provide the services for which she billed; instead, Eubanks contends that the Department merely identified various

⁶⁷ Eubanks brief pp. 6-7.

⁶⁸ *Id.* p. 6.

⁶⁹ Tr. 225.

⁷⁰ *Kinzenbaw v. Director of Revenue*, 62 S.W.3d 49, 53 (Mo. banc 2001).

types of record keeping and documentation errors. Eubanks also affirmatively asserts that she provided all of the services for which she billed. Even if we accepted Eubanks' assertions, however, the Department would not be barred from imposing sanctions for inadequate documentation.

As an initial matter, Eubanks' argument ignores that she has the burden of proof. The Department does not have the burden of proving that Eubanks did not provide the services for which she billed or that the services provided were not authorized for payment. The burden on all issues lies with Eubanks.

More fundamentally, when the sanction imposed is for inadequate documentation, it does not matter whether Eubanks provided all of the services for which she billed. The question is whether the documentation complies with the requirements imposed on Mo HealthNet providers. Even had we found that Eubanks proved that all of the services billed had been provided, the Department could still impose sanctions against Eubanks for failing to keep and make available adequate records substantiating the services billed. Therefore, Eubanks' argument that the Department failed to show that her services were substandard, inappropriate, or fraudulently billed fails, because it is irrelevant to the issues presented.

*The Department Failed to Provide an "Itemized Statement"
of Recoupment Amounts*

In her brief, Eubanks alleges that the Department failed to provide an itemized statement of its recoupment charges against her.⁷¹ As a result, she argues, she is "concerned that the state may be seeking excessive recoupment and double dipping." She requests additional documentation from the state on this matter.

⁷¹ Eubanks brief pp. 13-14.

First, since we have conducted a thorough review of the records and substituted our discretion for the Department's regarding the amount of recoupment and how it was calculated, Eubanks' point is moot. Second, however, we did find "double-dips" when the Department imposed recoupment for error code A as well as for error codes J and N. We address the duplication above in our discussions of those error codes.

Summary Regarding Sanctions

Eubanks violated the applicable regulations relating to all error codes except error code L. Therefore, grounds exist to impose sanctions on her under 13 CSR 70-3.030(3)(A)4, 7, 33, 38, 39, 40, and 41. We impose the sanction of full recoupment of what Eubanks was paid for error codes A, M and Q, for totals of \$16,784.00, \$4,755.00, and \$58.00 respectively; recoupment of half of what Eubanks was paid for error codes J and P, for a total of \$29.00 each; and recoupment of \$10.00 per error for error code O, for a total of \$50.00 respectively. We impose a sanction of \$348.00 each for error codes B and C. These sanctions total \$22,235.00.

We also impose the sanction of 100% review of Eubanks' claims prior to payment, pursuant to 13 CSR 70-3.030(4)(J), for a period of 60 days from the date this decision becomes final and no longer subject to appeal. The Department may, in its discretion, shorten that time as it sees fit.

Eubanks' services rendered for which the Department assessed errors, the dates such services were rendered, the Department's original error code assignments, our error code assignments, and our calculation of the recoupment amount are incorporated in a chart attached to the end of this decision and made a part hereof.

Summary

Eubanks is subject to recoupment sanctions in the amount of \$22,235.00, and 100% review of her claims prior to payment for a period of 60 days from the date this decision becomes final and no longer subject to appeal.

SO ORDERED on October 23, 2014.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

[illegible]

H.A.	29-Jul	58	ABCN	A	58									58	58
H.A.	5-Aug	58	ABCN	A	58									58	58
H.A.	12-Aug	58	ABCN	A	58									58	58
H.A.	19-Aug	58	BCM	M				58						58	58
H.A.	19-Aug	58	ABCHN	A	58									58	58
H.A.	24-Aug	58	BCM	M				58						58	58
H.A.	7-Sep	58	ABCN	A	58									58	58
H.A.	15-Sep	58	BCM	M										0	0
H.A.	15-Sep	58	BCM	M				58						58	58
H.A.	22-Sep	58	BCM	M				58						58	58
H.A.	29-Sep	58	BCM	M										0	0
H.A.	29-Sep	58	BCM	M				58						58	58
H.A.	6-Oct	58	ABCN	A	58									58	58
H.A.	12-Oct	58	BCM	M				58						58	58
H.A.	13-Oct	58	BCM	M				58						58	58
H.A.	20-Oct	58	ABCDN	AD	58									58	58
H.A.	3-Nov	58	BCM											0	0
H.A.	3-Nov	58	BCM	M				58						58	58
H.A.	10-Nov	58	BCM	M				58						58	58
H.A.	1-Dec	58	BCM	M				58						58	58
H.A.	8-Dec	58	BCM	M				58						58	58
H.A.	15-Dec	58	BCM	M				58						58	58
C.A.	2-Mar	58	AHN	A	58									58	58
C.A.	18-Mar	58	AN	A	58									58	58
C.A.	31-Mar	58	AN	A	58									58	58
C.A.	20-Apr	58	AN	A	58									58	58
C.A.	25-Apr	58	EF	F										0	0
C.A.	9-May	58	E											0	0
C.A.	23-May	58	E											0	0
C.A.	6-Jun	58	DE	D										0	0
C.A.	20-Jun	58	DE	D										0	0
C.A.	11-Jul	58	E											0	0
C.A.	17-Aug	58	M											0	0
C.A.	17-Aug	58	AN	A	58									58	58
C.A.	30-Aug	58	M											0	0
C.A.	30-Aug	58	AN	A	58									58	58

C.A.	12-Sep	58	M											0	0
C.A.	12-Sep	58	AN	A	58									58	58
C.A.	26-Sep	58	M	M				58						58	58
C.A.	4-Oct	58	M	M				58						58	58
C.A.	17-Oct	58	AN	A	58									58	58
C.A.	24-Oct	58	AN	A	58									58	58
C.A.	14-Nov	58	M											0	0
C.A.	14-Nov	58	M	M				58						58	58
C.A.	28-Nov	58	M											0	0
C.A.	28-Nov	58	M	M				58						58	58
C.A.	5-Dec	58	M											0	0
C.A.	5-Dec	58	M	M				58						58	58
C.A.	15-Dec	58	M											0	0
C.A.	15-Dec	58	M	M				58						58	58
D.C.	26-Jan	58	M											0	0
D.C.	26-Jan	58	AN	A	58									58	58
D.C.	23-Feb	58	AN	A	58									58	58
D.C.	23-Feb	58	AJN	A	58									58	58
D.C.	16-Mar	58	M											0	0
D.C.	16-Mar	58	M	M				58						58	58
D.C.	13-Apr	58	AN	A	58									58	58
D.C.	13-Apr	58	M											0	0
D.C.	27-Apr	58	M											0	0
D.C.	27-Apr	58	M	M				58						58	58
D.C.	4-May	58	M											0	0
D.C.	4-May	58	M	M				58						58	58
D.C.	18-May	58	AN	A	58									58	58
D.C.	18-May	58	M											0	0
H.C. global (B, C)		116		BC		58	58							116	116
H.C.	6-Jan	48	ABCN	A	48									48	48
H.C.	27-Jan	48	ABCN	A	48									48	48
H.C.	3-Feb	48	ABCN	A	48									48	48
H.C.	10-Feb	48	BCM	M				48						48	48
H.C.	3-Mar	48	ABCN	A	48									48	48
H.C.	15-Mar	48	ABCN	A	48									48	48

H.C.	22-Mar	48	ABCN	A	48									48	48
H.C.	29-Mar	48	ABCN	A	48									48	48
H.C.	5-Apr	48	ABCN	A	48									48	48
H.C.	19-Apr	48	ABCN	A	48									48	48
H.C.	26-Apr	48	ABCN	A	48									48	48
H.C.	3-May	48	ABCN	A	48									48	48
H.C.	10-May	48	ABCN	A	48									48	48
H.C.	17-May	48	ABCN	A	48									48	48
H.C.	24-May	48	ABCN	A	48									48	48
H.C.	31-May	48	ABCN	A	48									48	48
H.C.	7-Jun	48	ABCN	A	48									48	48
H.C.	14-Jun	48	ABCN	A	48									48	48
H.C.	28-Jun	48	ABCN	A	48									48	48
H.C.	12-Jul	48	ABCN	A	48									48	48
H.C.	19-Jul	48	ABCN	A	48									48	48
H.C.	26-Jul	58	ABCJN	A	58									58	58
H.C.	26-Jul	58	BCM	M										0	0
H.C.	2-Aug	58	ABCN	A	58									58	58
H.C.	2-Aug	58	ABCJN	A	58									58	58
H.C.	9-Aug	58	ABCN	A	58									58	58
H.C.	9-Aug	58	ABCJN	A	58									58	58
H.C.	16-Aug	58	ABCN	A	58									58	58
H.C.	23-Aug	58	BCM	M										0	0
H.C.	23-Aug	58	ABCN	A	58									58	58
H.C.	6-Sep	58	ABCN	A	58									58	58
H.C.	13-Sep	58	ABCN	A	58									58	58
H.C.	19-Sep	58	BCM	M				58						58	58
H.C.	10-Oct	58	BCM	M										0	0
H.C.	10-Oct	58	ABCN	A	58									58	58
H.C.	18-Oct	58	BCM	M				58						58	58
H.C.	25-Oct	58	ABCN	A	58									58	58
H.C.	1-Nov	58	ABCDN	AD	58									58	58
H.C.	8-Nov	58	ABCDN	AD	58									58	58
H.C.	29-Nov	58	BCM	M				58						58	58

H.C.	6-Dec	58	ABCDN	AD	58									58	58
H.C.	13-Dec	58	ABCDN	AD	58									58	58
B.H. global (B, C)		116		BC		58	58							116	116
B.H.	5-Jan	58	ABCN	A	58									58	58
B.H.	5-Jan	58	ABCJN	A	58									58	58
B.H.	11-Jan	58	ABCN	A	58									58	58
B.H.	9-Feb	58	ABCN	A	58									58	58
B.H.	18-Feb	58	ABCN	A	58									58	58
B.H.	4-Mar	58	ABCN	A	58									58	58
B.H.	18-Mar	58	ABCNO	AO	58					10				68	58
B.H.	1-Apr	58	ABCN	A	58									58	58
B.H.	15-Apr	58	ABCN	A	58									58	58
B.H.	29-Apr	58	ABCN	A	58									58	58
B.H.	13-May	58	ABCJN	A	58									58	58
B.H.	20-May	58	ABCN	A	58									58	58
B.H.	6-Jun	58	ABCDN	AD	58									58	58
B.H.	17-Jun	58	ABCDNO	AO	58					10				68	58
B.H.	1-Jul	58	ABCJNO	AO	58					10				68	58
B.H.	11-Jul	58	ABCDHN	A	58									58	58
B.H.	18-Jul	58	ABCDN	AD	58									58	58
B.H.	14-Sep	29	EG	G										0	0
B.H.	21-Sep	29	EGH	GH										0	0
B.H.	28-Sep	58	ANO	AO	58					10				68	58
B.H.	5-Oct	58	ANO	AO	58					10				68	58
B.H.	12-Oct	58	M	M				58						58	58
C.Ha.	2-Jan	48	AN	A	48									48	48
C.Ha.	2-Jan	48	M											0	0
C.Ha.	9-Jan	48	AN	A	48									48	48
C.Ha.	23-Jan	48	AN	A	48									48	48
C.Ha.	30-Jan	48	AN	A	48									48	48
C.Ha.	5-Feb	48	M	M				48						48	48
C.Ha.	13-Feb	48	AN	A	48									48	48
C.Ha.	20-Feb	48	M	M				48						48	48
C.Ha.	27-Feb	48	M	M				48						48	48
C.Ha.	6-Mar	48	AN	A	48									48	48

C.Ha.	20-Mar	48	E											0	0
C.Ha.	27-Mar	24	EG	G										0	0
C.Ha.	2-Apr	24	EG	G										0	0
C.Ha.	15-May	48	AHN	A	48									48	48
C.Ha.	22-May	48	AN	A	48									48	48
C.Ha.	29-May	48	AN	A	48									48	48
C.Ha.	5-Jun	48	AN	A	48									48	48
C.Ha.	12-Jun	48	M	M				48						48	48
C.Ha.	19-Jun	58	AN	A	58									58	58
C.Ha.	28-Jun	58	AN	A	58									58	58
C.Hu	11-Feb	58	AN	A	58									58	58
C.Hu	16-Feb	58	AN	A	58									58	58
C.Hu	23-Feb	58	AN	A	58									58	58
C.Hu	3-Mar	58	AN	A	58									58	58
C.Hu	7-Mar	58	AN	A	58									58	58
C.Hu	18-Mar	58	AN	A	58									58	58
C.Hu	21-Mar	58	AN	A	58									58	58
C.Hu	28-Mar	58	AN	A	58									58	58
C.Hu	1-Apr	58	AKN	A	58									58	58
C.Hu	8-Apr	58	AKN	A	58									58	58
C.Hu	8-Apr	58	M											0	0
C.Hu	16-Apr	58	AN	A	58									58	58
C.Hu	16-Apr	58	M											0	0
C.Hu	18-Apr	58	ADN	AD	58									58	58
C.Hu	30-Apr	58	M	M				58						58	58
C.Hu	6-May	58	AKN	A	58									58	58
C.Hu	9-May	58	ADN	AD	58									58	58
C.Hu	16-May	58	A.D.N	AD	58									58	58
C.Hu	23-May	58	AN	A	58									58	58
C.Hu	31-May	58	M	M				58						58	58
C.Hu	3-Jun	29	AGN	AG	29									29	29
C.Hu	13-Jun	29	AP	AP	29						29			58	29
C.L.	3-Jan	58	AN	A	58									58	58

C.L.	3-Jan	58	M											0	0
C.L.	24-Jan	58	AN	A	58									58	58
C.L.	31-Jan	58	ANQ	AQ	58							58		116	58
C.L.	3-Feb	58	M											0	0
C.L.	7-Feb	58	AN	A	58									58	58
C.L.	14-Feb	58	AN	A	58									58	58
C.L.	21-Feb	58	AN	A	58									58	58
C.L.	28-Feb	58	AN	A	58									58	58
C.L.	14-Mar	58	E											0	0
C.L.	24-Mar	58	E											0	0
C.L.	28-Mar	58	E											0	0
C.L.	18-Apr	58	AJN	A	58				29					87	58
C.L.	25-Apr	58	ADN	AD	58									58	58
C.L.	2-May	58	M	M					58					58	58
C.L.	9-May	58	ADN	AD	58									58	58
C.L.	16-May	58	ADN	AD	58									58	58
C.L.	24-May	58	AN	A	58									58	58
C.L.	3-Jun	58	EK	EK										0	0
C.L.	6-Jun	58	E.J.K	JK										0	0
C.L.	13-Jun	58	EIK	IK										0	0
C.L.	20-Jun	58	AGN	AG	58									58	58
C.L.	27-Jun	58	ADN	AD	58									58	58
C.L.	11-Jul	58	AHN	A	58									58	58
C.L.	11-Jul	58	M	M					58					58	58
C.L.	18-Jul	58	M	M					58					58	58
C.L.	25-Jul	58	AN	A	58									58	58
C.L.	25-Jul	58	M											0	0
C.L.	3-Aug	58	AN	A	58									58	58
C.L.	8-Aug	58	AN	A	58									58	58
C.L.	17-Aug	58	AN	A	58									58	58
C.L.	26-Aug	58	AN	A	58									58	58
C.L.	9-Sep	58	M	M					58					58	58
C.L.	13-Sep	58	ADN	AD	58									58	58
C.L.	14-Sep	58	M	M					58					58	58
C.L.	20-Sep	58	M	M					58					58	58
C.L.	21-Sep	58	AN	A	58									58	58

C.L.	26-Sep	58	AN	A	58									58	58
C.L.	14-Oct	58	AN	A	58									58	58
C.L.	17-Oct	58	ADN	AD	58									58	58
C.L.	27-Oct	58	AKN	A	58									58	58
C.L.	27-Oct	58	AN	A	58									58	58
C.L.	31-Oct	58	M											0	0
C.L.	31-Oct	58	M	M				58						58	58
C.L.	7-Nov	58	ADN	AD	58									58	58
C.L.	14-Nov	58	ADN	AD	58									58	58
C.L.	21-Nov	58	M	M				58						58	58
C.L.	1-Dec	58	ADN	AD	58									58	58
M.L.	24-Jan	58	AN	A	58									58	58
M.L.	31-Jan	58	AN	A	58									58	58
M.L.	7-Feb	58	AN	A	58									58	58
M.L.	14-Feb	58	AN	A	58									58	58
M.L.	22-Feb	58	AHN	A	58									58	58
M.L.	28-Feb	58	AN	A	58									58	58
M.L.	7-Mar	58	AN	A	58									58	58
M.L.	14-Mar	58	AN	A	58									58	58
M.L.	21-Mar	58	AN	A	58									58	58
M.L.	28-Mar	58	AN	A	58									58	58
M.L.	4-Apr	58	ADN	AD	58									58	58
M.L.	11-Apr	58	ADN	AD	58									58	58
M.L.	18-Apr	58	ADN	AD	58									58	58
C.M.	28-May	58	AN	A	58									58	58
C.M.	4-Jun	58	AN	A	58									58	58
C.M.	11-Jun	58	AN	A	58									58	58
C.M.	17-Jun	58	AN	A	58									58	58
C.M.	22-Jun	58	AN	A	58									58	58
C.M.	28-Jun	58	AN	A	58									58	58
C.M.	6-Jul	58	AN	A	58									58	58
C.M.	13-Jul	58	AN	A	58									58	58
C.M.	21-Jul	58	AKN	A	58									58	58
C.M.	21-Jul	58	AN	A	58									58	58
C.M.	29-Jul	58	M											0	0
C.M.	29-Jul	58	AJKN	A	58									58	58

C.M.	4-Aug	58	AN	A	58									58	58
C.M.	4-Aug	58	AKN	A	58									58	58
C.M.	9-Aug	58	AKN	A	58									58	58
C.M.	9-Aug	58	AN	A	58									58	58
C.M.	18-Aug	58	E											0	0
C.M.	18-Aug	58	AKN	A	58									58	58
C.M.	23-Aug	58	E											0	0
C.M.	23-Aug	58	AKN	A	58									58	58
C.M.	29-Aug	58	E											0	0
C.M.	29-Aug	58	AKN	A	58									58	58
C.M.	8-Sep	58	M											0	0
C.M.	8-Sep	58	AKN	A	58									58	58
C.M.	12-Sep	58	M	M				58						58	58
C.M.	12-Sep	58	AKN	A	58									58	58
C.M.	22-Sep	58	EJK	JK			29							29	29
C.M.	22-Sep	58	M											0	0
C.M.	28-Sep	58	EF	F										0	0
C.M.	29-Sep	29	AHI	AI	29									29	29
C.M.	4-Oct	29	I	I										0	0
C.M.	7-Oct	58	M	M				58						58	58
C.M.	10-Oct	58	M	M				58						58	58
C.M.	10-Oct	58	AKN	A	58									58	58
C.M.	17-Oct	58	AKN	A	58									58	58
C.M.	17-Oct	58	AN	A	58									58	58
C.M.	26-Oct	58	M											0	0
C.M.	26-Oct	58	M	M				58						58	58
C.M.	31-Oct	58	M											0	0
C.M.	31-Oct	58	M	M				58						58	58
C.M.	7-Nov	58	M											0	0
C.M.	7-Nov	58	M	M				58						58	58
C.M.	14-Nov	58	AN	A	58									58	58
C.M.	14-Nov	58	M											0	0
C.M.	5-Dec	58	M											0	0
C.M.	5-Dec	58	AKN	A	58									58	58
C.M.	12-Dec	58	AKN	A	58									58	58
C.M.	12-Dec	58	M											0	0
C.M.	21-Dec	58	M											0	0

C.M.	21-Dec	58	M	M					58					58	58
C.M.	28-Dec	58	M											0	0
C.M.	28-Dec	58	AKN	A	58									58	58
N.M.	27-Aug	58	AN	A	58									58	58
N.M.	17-Sep	58	AHN	A	58									58	58
N.M.	25-Sep	58	AN	A	58									58	58
N.M.	2-Oct	58	AN	A	58									58	58
N.M.	5-Nov	58	AN	A	58									58	58
N.M.	12-Nov	58	AN	A	58									58	58
N.M.	19-Nov	58	ADN	AD	58									58	58
N.M.	3-Dec	58	ADN	AD	58									58	58
N.M.	10-Dec	58	ADN	AD	58									58	58
J.P. global (B, C)		116		BC		58	58							116	116
J.P.	5-Jan	58	ABCN	A	58									58	58
J.P.	12-Jan	58	BCM											0	0
J.P.	12-Jan	58	BCM	M				58						58	58
J.P.	9-Feb	58	ABCN	A	58									58	58
J.P.	16-Feb	58	ABCN	A	58									58	58
J.P.	23-Feb	58	ABCN	A	58									58	58
J.P.	2-Mar	58	ABCKN	A	58									58	58
J.P.	2-Mar	58	ABCN	A	58									58	58
J.P.	23-Mar	58	ABCN	A	58									58	58
J.P.	13-Apr	58	ABCN	A	58									58	58
J.P.	16-Apr	58	ABCHN	A	58									58	58
J.P.	20-Apr	58	ABCN	A	58									58	58
J.P.	4-May	58	ABCDN	AD	58									58	58
J.P.	18-May	58	ABCDN	AD	58									58	58
J.P.	27-May	58	BCM	M				58						58	58
J.P.	1-Jun	58	ABCDN	AD	58									58	58
J.P.	15-Jun	58	ABCDN	AD	58									58	58
J.P.	29-Jun	58	ABCDN	AD	58									58	58
J.P.	13-Jul	58	ABCDN	AD	58									58	58
J.P.	12-Aug	58	ABCDN	AD	58									58	58
J.P.	24-Aug	58	ABCDN	AD	58									58	58
J.P.	14-Sep	29	ACGLN	AG	29									29	29

J.P.	21-Sep	29	ACGLN	AG	29									29	29
J.P.	28-Sep	29	ACGLN	AG	29									29	29
J.P.	5-Oct	58	ABCN	A	58									58	58
I.P.	2-Jan	48	AN	A	48									48	48
I.P.	9-Jan	48	AN	A	48									48	48
I.P.	23-Jan	48	AN	A	48									48	48
I.P.	30-Jan	48	AN	A	48									48	48
I.P.	5-Feb	48	M	M				48						48	48
I.P.	13-Feb	48	AN	A	48									48	48
I.P.	20-Feb	48	M	M				48						48	48
I.P.	27-Feb	48	M	M				48						48	48
I.P.	6-Mar	48	AN	A	48									48	48
I.P.	20-Mar	48	E											0	0
I.P.	27-Mar	24	EG	G										0	0
I.P.	2-Apr	24	EG	G										0	0
I.P.	15-May	48	AHN	A	48									48	48
I.P.	22-May	48	AN	A	48									48	48
I.P.	29-May	48	M	M				48						48	48
I.P.	5-Jun	48	AN	A	48									48	48
I.P.	12-Jun	48	M	M				48						48	48
I.P.	19-Jun	48	AN	A	48									48	48
I.P.	28-Jun	58	AN	A	58									58	58
S.P.	2-Jan	48	AN	A	48									48	48
S.P.	9-Jan	48	AN	A	48									48	48
S.P.	23-Jan	48	AN	A	48									48	48
S.P.	30-Jan	48	AN	A	48									48	48
S.P.	5-Feb	48	M	M				48						48	48
S.P.	13-Feb	48	AN	A	48									48	48
S.P.	20-Feb	48	M	M				48						48	48
S.P.	27-Feb	48	M	M				48						48	48
S.P.	6-Mar	48	AN	A	48									48	48
S.P.	20-Mar	48	E											0	0
S.P.	27-Mar	24	EG	G										0	0
S.P.	2-Apr	24	EG	G										0	0
S.P.	15-	48	AHN	A	48									48	48

	May														
S.P.	22-May	48	AN	A	48									48	48
S.P.	29-May	48	AN	A	48									48	48
S.P.	5-Jun	48	AN	A	48									48	48
S.P.	12-Jun	48	M	M				48						48	48
S.P.	19-Jun	48	AN	A	48									48	48
S.P.	28-Jun	58	AN	A	48									48	48
A.P. global (B, C)		116		BC		58	58							116	116
A.P.	6-Jan	48	ABCN	A	48									48	48
A.P.	27-Jan	48	ABCKN	A	48									48	48
A.P.	10-Feb	48	BCM											0	0
A.P.	17-Feb	48	ABCKN	A	48									48	48
A.P.	3-Mar	48	ABCKN	A	48									48	48
A.P.	17-Mar	48	ABCKN	A	48									48	48
A.P.	31-Mar	48	ABCKN	A	48									48	48
A.P.	7-Apr	48	ABCKN	A	48									48	48
A.P.	14-Apr	48	BCM	M				48						48	48
A.P.	21-Apr	48	ABCHKN	A	48									48	48
A.P.	12-May	48	ABCKN	A	48									48	48
A.P.	19-May	48	ABCKN	A	48									48	48
A.P.	2-Jun	48	ABCKN	A	48									48	48
A.P.	9-Jun	48	ABCJKN	A	48									48	48
A.P.	16-Jun	48	BCM	M				48						48	48
A.P.	23-Jun	48	ABCKN	A	48									48	48
A.P.	30-Jun	48	ABCKN	A	48									48	48
A.P.	7-Jul	48	BCM	M				48						48	48
A.P.	14-Jul	48	ABCKN	A	48									48	48
A.P.	21-Jul	48	ABCKN	A	48									48	48
A.P.	28-Jul	48	BCM	M				48						48	48
A.P.	4-Aug	48	BCM	M				48						48	48
A.P.	11-Aug	48	ABCKN	A	48									48	48
A.P.	18-Aug	48	BCM	M				48						48	48
A.P.	25-Aug	48	ABCKN	A	48									48	48

M.S. global (B, C)		116		BC		58	58							116	116
M.S.	4-Jan	58	BCM											0	0
M.S.	4-Jan	58	BCM	M				58						58	58
M.S.	28-Jan	58	BCM											0	0
M.S.	28-Jan	58	ABCN	A	58									58	58
M.S.	3-Feb	58	ABCN	A	58									58	58
M.S.	3-Feb	58	BCM											0	0
M.S.	8-Feb	58	ABCN	A	58									58	58
M.S.	14-Feb	58	BCM											0	0
M.S.	14-Feb	58	ABCN	A	58									58	58
M.S.	28-Feb	58	ABCN	A	58									58	58
M.S.	14-Mar	58	ABCN	A	58									58	58
M.S.	21-Mar	58	ABCN	A	58									58	58
M.S.	28-Mar	58	ABCN	A	58									58	58
M.S.	4-Apr	58	ABCN	A	58									58	58
M.S.	11-Apr	58	ABCJKN	A	58									58	58
M.S.	18-Apr	58	ABCJKN	A	58									58	58
M.S.	2-May	58	BCM	M				58						58	58
M.S.	16-May	58	ABCKN	A	58									58	58
M.S.	25-Oct	58	BCM											0	0
M.S.	25-Oct	58	BCM	M				58						58	58
M.S.	7-Nov	58	BCM											0	0
M.S.	7-Nov	58	ABCN	A	58									58	58
M.S.	5-Dec	58	ABCN	A	58									58	58
M.S.	5-Dec	58	ABCKN	A	58									58	58
M.S.	21-Dec	58	ABCN	A	58									58	58
M.S.	21-Dec	58	ABCKN	A	58									58	58
E.T.	23-May	58	AN	A	58									58	58
E.T.	3-Jun	58	AN	A	58									58	58
E.T.	10-Jun	58	AN	A	58									58	58
E.T.	17-Jun	58	AHN	A	58									58	58
E.T.	1-Jul	58	M											0	0
E.T.	1-Jul	58	AN	A	58									58	58
E.T.	8-Jul	58	M											0	0
E.T.	8-Jul	58	M	M				58						58	58

E.T.	21-Oct	58	M											0	0
E.T.	21-Oct	58	M	M					58					58	58
E.T.	4-Nov	58	M											0	0
E.T.	4-Nov	58	M	M					58					58	58
E.T.	11-Nov	58	M											0	0
E.T.	11-Nov	58	M	M					58					58	58
E.T.	18-Nov	58	M											0	0
E.T.	18-Nov	58	M	M					58					58	58
E.T.	3-Dec	58	BCM											0	0
E.T.	3-Dec	58	BCM	M					58					58	58
E.T.	10-Dec	58	BCM											0	0
E.T.	10-Dec	58	BCM	M					58					58	58
J.W.	1-Apr	48	AN	A	48									48	48
J.W.	16-Apr	48	AN	A	48									48	48
J.W.	29-Apr	48	AFN	AF	48									48	48
J.W.	6-May	48	AN	A	48									48	48
J.W.	13-May	48	AKN	A	48									48	48
J.W.	13-May	48	M											0	0
J.W.	20-May	48	M											0	0
J.W.	20-May	48	M	M					48					48	48
J.W.	28-May	48	AN	A	48									48	48
J.W.	3-Jun	48	AN	A	48									48	48
J.W.	10-Jun	48	AN	A	48									48	48
J.W.	24-Jun	48	AN	A	48									48	48
J.W.	8-Jul	48	M											0	0
J.W.	29-Jul	48	M											0	0
J.W.	20-Aug	48	AN	A	48									48	48
J.W.	20-Aug	48	DE	D										0	0
J.W.	26-Aug	48	E											0	0
J.W.	26-Aug	48	M											0	0
J.W.	10-Sep	48	DE	D										0	0
J.W.	24-Sep	48	M	M					48					48	48
J.W.	7-Oct	48	AKN	A	48									48	48

J.W.	14-Oct	48	M	M					48					48	48
J.W.	22-Oct	48	AKN	A	48									48	48
J.W.	22-Oct	48	M											0	0
J.W.	5-Nov	58	AKN	A	58									58	58
J.W.	5-Nov	58	M											0	0
J.W.	12-Nov	58	AFN	AF	58									58	58
J.W.	19-Nov	58	M	M					58					58	58
L.W.	1-Apr	48	AN	A	48									48	48
L.W.	16-Apr	48	AN	A	48									48	48
L.W.	29-Apr	48	AN	A	48									48	48
L.W.	6-May	48	AN	A	48									48	48
L.W.	13-May	48	M	M					48					48	48
L.W.	20-May	48	AHN	A	48									48	48
L.W.	28-May	48	AN	A	48									48	48
L.W.	3-Jun	48	AN	A	48									48	48
L.W.	10-Jun	48	AN	A	48									48	48
L.W.	24-Jun	48	M	M					48					48	48
TOTAL					16784	348	348	29	4755	0	50	29	58		22235